

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

CASE No. LC2003-000539-001

9 V.

**REPLY TO MOTION FOR TRIAL DE  
NOVO AND TRIAL BY JURY**

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

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 J.R.A.D.<sup>1</sup> 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 **II. REPLY**

21 Plaintiff replies to the Defendants' responses to his motion for Trial de Novo and Trial by Jury  
22 requesting that the Court grant both Plaintiffs motions. Plaintiff's request is based on the attached  
23 memorandum and points of authority.

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25 **III. MEMORANDUM AND POINTS OF AUTHORITY**

26 The action now before the Court is a Judicial Review of Administrative Decision of a decision from the  
27 State of Arizona Personnel Board. McNair's request for review was timely filed pursuant to Arizona  
28 Revised Statutes Title 12, Chapter 7, Article 6 on June 5<sup>th</sup> 2003.

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

1 Included in McNair's complaint to the Court, and in accordance with J.R.A.D. Rule 11 and A.R.S. § 12-  
2 910(C), McNair has demanded both a Trial de Novo and Trial by Jury.

3 In accordance with the requirements of statute and rules of procedure, McNair subsequently filed a  
4 separate motion for a Trial de Novo and Trial by Jury on July 7 2003.

5 All Defendants have since responded, requesting that McNair's motion for such be denied.

6 For the Court's convenience , A.R.S. § 12-910(C) is cited in its entirety below:

7 C. For review of final administrative decisions of agencies that are  
8 exempt from sections 41-1092.03 through 41-1092.11, pursuant to  
9 section 41-1092.02, the trial shall be de novo if trial de novo is  
10 demande d in the complaint or answer of a defendant other than the  
11 agency and if a hearing was not held by the agency or the proceedings  
12 before the agency were not stenographically reported or mechanically  
13 recorded so that a transcript might be made. On demand of any party, if  
14 a trial de novo is available under this section, it may be with a jury,  
15 except that a trial of an administrative decision under section 25-522  
16 shall be to the court.

17 For different reasons, Defendants have asserted that a jurisdictional proceeding held on February 10  
18 2003 constitutes a "*Hearing*" as referenced by A.R.S. § 12-910(C), and should be grounds for denial of  
19 McNair's motion.

20 Any reference to this jurisdictional proceeding as grounds for dismissal of McNair's demand, is without  
21 merit.

22 The purpose of the February 10 2003 proceeding was solely to establish whether or not the State of  
23 Arizona Personnel Board (Board) had jurisdiction over the complaint filed by McNair.

24 In order for the Defendants to assert that McNair was afforded a "*Hearing*" as referenced by A.R.S. §  
25 12-910(C), the proceedings of such must encompass at the minimum the following components:

- 26 1. The purpose of the "*Hearing*" must be to hear the merits and substance of the Complaint,
- 27 2. The Plaintiff must be afforded the opportunity to present evidence and testimony
- 28 3. The Plaintiff must be afforded the opportunity to be heard

29 Since the jurisdictional proceeding was not a hearing on the merits or substance of McNair's Complaint,  
then no "*Hearing*" was ever held.

1 In the Board's response, it contends that the tape-recording of the proceedings of February 10 2003  
2 constitutes grounds for denial. This argument is also without merit. A.R.S. § 12-910(C) reads:

3 "...if a hearing was not held by the agency or the proceedings before the  
4 agency were not stenographically reported or mechanically recorded..."

5 The **OR** included in the statute provides that if either of the requirements were not met, then there is  
6 grounds for a Trial de Novo. Since this was a jurisdictional proceeding and not a hearing on the merits or  
7 substance of McNair's Complaint, whether or not the proceeding was recorded or reported is irrelevant.

#### 9 IV. SUMMARY

10 The history of this case is testament to the perfidious lengths to which the County and the Board will go  
11 to prevent McNair from being given the opportunity to protect his right to expose corruption. McNair's  
12 complaints were first abandoned and ignored by the County. Then the State engineered a one-sided charade  
13 of a proceeding as a means to squash McNair's lawful right to due process.

14 Because of this, the matter is now before the Superior Court of Arizona. The County and State continue  
15 to play loose with the facts and the law, in order to prevent McNair from receiving due process and justice.

16 McNair now must rely upon the integrity of the Superior Court to protect his right to due process. In  
17 considering the motion for Trial de Novo and Trial by Jury, McNair graciously requests the Court to weigh  
18 heavily a citation from the U.S. Second Circuit Court of Appeals (*Criales v American Airlines, Inc*, January  
19 1997):

20 We noted in *Fay v. South Colonie Central School District*, 802 F.2d 21, 29 (2d  
21 Cir. 1986), that "[i]n properly seeking to deny a litigant two 'days in court', courts  
22 must be careful not to deprive him of one."

#### 24 V. CONCLUSION

25 McNair was never afforded a hearing on the merits and substance of his claim, and therefore no  
26 "*Hearing*" was ever held by the agency.

27 As a result, the Court is bound by A.R.S. § 12-910(C) to grant McNair's demand for Trial de Novo and  
28 Trial by Jury.

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RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of AUGUST 2003.

By \_\_\_\_\_

Scott M. McNair  
Plaintiff (Pro Per)

ORIGINAL and copy of the foregoing FILED this 1<sup>st</sup> day of AUGUST 2003 with:

Clerk of the Court  
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COPIES of the foregoing mailed this 1<sup>st</sup> day of AUGUST 2003 to Defendants:

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By \_\_\_\_\_

Scott M. McNair  
Plaintiff (Pro Per)