

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

CASE No. LC2003-000539-001

9 V.

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

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.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. CASE HISTORY AND MEMORANDUM**

22 The action now before the Court is an appeal for Judicial Review of Administrative Decision from a
23 decision of a "*Whistleblower Complaint*" before the State of Arizona Personnel Board (Board).

24 Throughout McNair's attempt to adjudicate his case on an administrative level, he was continually
25 denied all opportunity to discovery. Defendant Maricopa County (County) has unilaterally refused or
26 ignored his requests for discovery, and done all in its power to prevent McNair from any discovery.
27 Including attempts to criminally extort money from him for public records he was legally entitled to for free.

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

1 While before the Board, McNair attempted to force discovery by exercising his right to pretrial
2 discovery through subpoena. The Board refused to issue such.

3 Prior to the February 10 2003 Jurisdictional Hearing, McNair filed motions for subpoena of documents
4 and witnesses. For reasons known only to Hearing Officer Harold J. Merkow (Merkow), McNair's
5 discovery related motions were completely ignored, and the proceeding was held without any discover
6 afforded to McNair.

7 At the hearing, McNair raised the issue of his discovery related motion(s) with Merkow. Merkow
8 became enraged with McNair for doing so and refused to allow him any opportunity to discovery, and
9 further refused McNair any prospect to present witnesses, evidence, testimony, and rebuttal argument.

10 A review of the proceedings will show that only the County was allowed to present its case before
11 Merkow. Merkow stopped the proceedings before allowing McNair to be heard. McNair was never allowed
12 to present a rebuttal case.

13 The County, Board, and Merkow have engineered a one-sided and incomplete record intended to be
14 deliberately prejudicial against McNair.

15 Subsequent to the proceedings and other motions filed by the County, Merkow issued his
16 recommendation to the Board. In it, he continually acknowledges that McNair was prejudiced by this lack of
17 discovery and opportunity to present evidence. Merkow's attempt to obscures his interference with
18 McNair's case by continually stating that "*McNair failed to present evidence...*" actually emphasizes it.

19 Merkow chose his deceptive words carefully in his recommendation. Merkow recurrently stated
20 "*McNair failed to present evidence...*", rather than the more accurate "*Merkow and the Board did all it*
21 *could to prevent McNair from presenting evidence...*"

22 After Merkow submitted his recommendation to the Board, McNair submitted an "*Objection*" to such
23 with the Board. In it, McNair again stated that by being denied opportunity to discovery and to submit
24 evidence, witnesses, and testimony, that he had been prejudiced and thereby denied due process. The Board
25 ignored such.

26 III. RESPONSES TO MOTION FOR DISCOVERY

27 As of the date of this reply, the County has failed to file any objection to McNair's motion for discovery
28 and admission of additional evidence. The Court must therefore assume that the County has no objection to
29 discovery or admission of additional evidence.

1 The Board (State) filed a **late** response to this motion on July 28th 2003. In its response, the Board
2 asserts a) that this is a review of record, and, b) that no additional supplement was requested...within a
3 timely fashion.

4 The Board's response contains numerous flaws.

5 McNair's motion was filed July 7 2003. Allowing 5 days for mailing to the Board, and 10 days to
6 respond, the Board was required to file a response no later than July 21. Making the Board's response of
7 July 28, **seven days late**. The Court must therefore reject the Board's response and assume the Board has no
8 objection to McNair's motion for discovery and additional evidence.

9 The County and Board, all represented by bar certified attorneys, have made great issue over McNair's
10 original complaint being filed late². The Board used McNair's supposed lateness as reason from dismissing
11 McNair's complaint. Under the concept of equitable justice, the Court must therefore impose the same
12 timing consideration upon the Board as it has upon McNair.

13 Beyond this, the Board's contention that discovery and admission of additional evidence should be
14 denied because this is a proceeding "*of a record on review*" is also flawed. McNair has motioned for a Trial
15 de Novo, which allows for the admission of the previous record, and, also allows discovery and admission
16 of additional evidence.

17 The Board's final argument is that there was no "timely" request for additional supplement. McNair's
18 motion for discovery and admission of additional evidence was filed in a "timely" manner. (As for being
19 "*timely*", McNair again points the Court to the lateness of the Board's response.)

20 In that the Board's is represented by counsel required to the know and abide by timing issues, and given
21 that their response was filed **seven days late**, the Court is compelled to reject it. Therefore there is no
22 objection by the Board to McNair's request for
23

24 IV. REASONS FOR DISCOVERY

25 All of the issues in this case relate in one manner or another to the Board and the other Defendants
26 denying McNair opportunity to discovery and submission of evidence into the record.

27 There are numerous issues in McNair's complaint concerning the manner in which the County, the
28 Board, and Merkow (Hearing Officer) have conducted themselves.

² The issue of the time and tolling of McNair's complaint is one of great dispute before the Court.

1 In fact Merkow's relationship to the Defendant(s) is itself an issue that has never been subject to
2 discovery.

3 McNair has filed and is entitled a Trial de Novo, making pretrial discovery a procedural requirement.

4 On the merits of the previous failure to permit McNair discovery, refusal to allow McNair opportunity to
5 submit evidence, present witnesses, and refusal to allow him opportunity to present argument at the
6 February 10 2003 proceeding, refusing McNair's motion will only give rise to grounds for further appeal of
7 this case, thereby wasting this Court's valuable time and resources.

8
9 **V. SUMMARY**

10 McNair was denied all previous opportunity to discovery, submission of evidence, or to present
11 argument on his behalf. The "record" before the Court is a one-sided record consisting only of that evidence
12 which the County and the Board chose to present. Therefore, McNair was denied due process, the record is
13 grossly incomplete, and warrants discovery and amendment.

14 None of the Defendants have provided any compelling reason to deny McNair's motion.

15 The County has failed to file any objection to McNair's motion, and therefore the Court must therefore
16 assume that the County has no objection such.

17 The Board's response was untimely, and therefore the Court must reject it and assume the Board has no
18 objection to McNair's motion for such.

19
20 **VI. CONCLUSION**

21 The purpose of any judicial proceeding is to "search for the truth." The truth is based upon known
22 facts.

23 Since the facts of the matter before the Court have never been discovered or presented, the truth is not
24 known. The Court is thereby compelled in the interest of justice and due process to grant McNair's motion
25 for discovery and admission of additional evidence.

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27 RESPECTFULLY SUBMITTED this 6th day of AUGUST 2003.

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29 By _____

30 Scott M. McNair
Plaintiff (Pro Per)

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ORIGINAL and copy of the foregoing FILED this 6th day of AUGUST 2003. with:

Clerk of the Court
Superior Court of Arizona, Maricopa County
201 West Jefferson Street
Phoenix, Arizona

COPIES of the foregoing mailed this 6th day of AUGUST 2003. 2003 to Defendants:

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By _____

Scott M. McNair
Plaintiff (Pro Per)