

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

**MOTION TO COMPEL WITHDRAWAL
OF COUNSEL AND REQUEST FOR
SANCTIONS**

(Assigned to the Honorable Michael D. Jones)

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 **II. SCOPE OF MOTION**

21 The Plaintiff (McNair) does hereby move the Court to order Mr. Daniel Brenden to withdraw as counsel
22 for any and all parties in this matter, and requests the Court to impose sanctions upon Brenden and the
23 County for their deliberately unethical behavior.

24 **III. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

25 On July 17 2002, McNair filed complaints with Maricopa County Officials against Defendants Kenneth
26 Medlin, Terry Peterson, and Jennipher Ramsey.

27 Following such, McNair has alleged that Maricopa County Officials (County) began a separate
28 campaign of retaliation against him in response to his complaints against Medlin, Peterson, and Ramsey.

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

1 For several months McNair corresponded with the County attempting to seek action on his complaints,
2 and to review and obtain public records in order to substantiate such.

3 On September 17 2002, Mr. Daniel Brenden (Brenden) of the Office of Counsel for Maricopa County
4 sent McNair a letter requesting that all further contact with the County be directed to him. After which
5 McNair corresponded with Brenden for several months. During this time Brenden proclaimed that he would
6 be directly involved with the investigation of the complaints against Medlin, Peterson, and Ramsey.

7 In response to McNair's public record requests, Brenden began making unlawful demands from McNair
8 for payment of copies of public records that McNair was entitled to for free. McNair replied to Brenden
9 informing him that his demand for payment was unlawful, and a class 5 felony under A.R.S. § 38-413 (b).
10 McNair also informed Brenden that he intended to pursue complaints against him with the State Bar of
11 Arizona and requested Brenden's Arizona State Bar identification number.

12 Brenden ignored McNair's letters, continued to unlawfully demand payment for free public record
13 searches, refused to disclose his State Bar ID, and continued to interfere with McNair's attempts to seek due
14 process in this matter.

15 In November of 2002, McNair wrote to the Maricopa County Board of Supervisors, Mr. Richard
16 Romley of the Office of the Maricopa County Attorney, and Mr. Joseph Arpaio of the Maricopa County
17 Sheriff's Office requesting criminal prosecution of Brenden for his violation of A.R.S. § 38-413 (b).

18 On December 30 2002, McNair filed a "*Whistleblower Complaint*" with the State of Arizona Personnel
19 Board (Board) against, Medlin, Peterson, Ramsey, and the County.

20 On December 31 2003, the Board issued a notice of McNair's complaint to all parties. A copy of the
21 notice was sent to Ms. Mary Cronin, as counsel of record for the County.

22 Following such, McNair made several requests of Brenden for records and documents under the rules of
23 Discovery and Disclosure. Brenden has continually refused to comply with any and all disclosure requests.

24 On approximately January 13 2003, McNair began filing requests for subpoena of witnesses and
25 documents with the Board, including a request naming Brenden as a witness.

26 On January 21 2003, McNair submitted to the County a list of County personnel intended to be called as
27 witnesses on McNair's behalf. Brenden was included in the list of witnesses.

1 On approximately January 23 2003, McNair received a “*Notice of Appearance*” from Brenden², dated
2 January 17 2003, yet postmarked January 21 2003. In it Brenden states that he would be representing
3 Maricopa County Department of Transportation in the matter before the Board.

4 On January 29 2003, McNair filed with the Board a *Motion to Reject Notice of Appearance* filed by
5 Brenden. In it McNair asserted that Brenden would be a critical witness in the case, and is therefore barred
6 from acting as an advocate. The Board completely ignored McNair’s motion and never ruled upon such.

7 At the February 10 2003 Jurisdictional Hearing before the Board, even though Brenden now asserted
8 himself as sole counsel for the County, both Brenden and Ms. Cronin appeared and acted as counsel for the
9 County.

10 On June 5 2003 McNair filed a complaint before this Court seeking Judicial Review of Administrative
11 Decision of the decision from the Board.

12 On June 19 2003 the Maricopa County Sheriff’s Office served Defendants Maricopa County (i.e.
13 Department of Transportation), Medlin, Peterson, and Ramsey with summons.

14 On July 9 2003, Brenden filed an answer to such with the Court, claiming to be answering on behalf of
15 the County, Medlin, Peterson, and Ramsey.

16 Since that date, with the full knowledge of the County, Brenden has continued to act in an unethical and
17 unlawful manner by acting as counsel for the County and attempting to assert himself as counsel for other
18 parties in the matter now before the Court.

19 On August 5 2003, Brenden filed a “*SEPARATE MOTION AND ORDER TO DIRECT PLAINTIFF’S*
20 *COMMUNICATION TO DEFENDANTS’ COUNSEL*”, attempting to coerce the Court into forcing McNair
21 to stop providing copies of pleadings to the individual Defendants Medlin, Peterson, and Ramsey.

22 23 **IV. MEMORANDUM AND POINTS OF AUTHORITY**

24 Throughout this case, Brenden has acted in an unethical, unlawful, and criminal manner.

25 Brenden’s willful and deliberate interference with Discovery and Disclosure in this case is legendary,
26 and one of the crucial points for the basis of McNair’s appeal for Judicial Review of Administrative
27 decision.

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² McNair has asserted that the dating and mailing of the *Notice of Appearance* submitted by Brenden was suspect or fraudulent, and intended to circumvent or interfere with McNair’s attempt to call Brenden as a witness.

1 The County was made aware of Brenden’s unlawful and criminal acts, has refused to prosecute him for
2 such, and continues to endorse and support his unethical behavior before this Court.

3 Brenden was listed as a witness in this case long ago. As an attorney certified by the State Bar of
4 Arizona, he is required to be knowledgeable in its rules concerning attorney conduct and ethics. Yet, he has
5 chosen to completely ignore them and insult the integrity of this Court by his actions.

6 As stated previously, Brenden was listed as a witness in this case as early as January 13 2003. As such,
7 he is specifically prohibited by Arizona State Bar Ethic Rules from representing any party in this case. The
8 relevant rule reads in part:

9 **ER 3.7. Lawyer as Witness**

10 (a) A lawyer shall not act as advocate at a trial in which the lawyer is
11 likely to be a necessary witness...

12 In this case, there is no debate as to whether or not Brenden is “*likely*” to be a necessary witness.
13 Brenden was specifically listed as a witness long ago.

14 After being named as a witness, in deliberate violation of ER 3.7 (a) Brenden filed a “*Notice of*
15 *Appearance*” with the Board.

16 The dating and timing of his “*Notice of Appearance*” shows a clearly deceptive and fraudulent pattern
17 to try and establish himself as the attorney of record prior to McNair’s notice that Brenden would be a
18 witness. The reason for this is known only to Brenden and the County, but is clearly unlawful and unethical.

19 Following this, McNair filed a motion with the Board demanding that Brenden be removed as counsel
20 for the County, clearly stating the situation as prohibited and unethical. Brenden should have voluntarily
21 removed himself at that point without further discussion or intervention from the Court (Board).

22 Brenden continued his unethical conduct, attempting to test the integrity of the Board. Brenden ignored
23 McNair’s motion, and failed to file a response to have himself removed as counsel.

24 Instead, even though Brenden now asserted himself as sole counsel for the County, on February 10
25 2003, fearing that the Board would order the removal of Brenden, Brenden appeared with Ms. Mary Cronin,
26 the former attorney of record in this case. Testing the integrity of the Board, Ms. Cronin contradicted
27 Brenden’s *Notice of Appearance*, and renewed her status as attorney of record in this case.

28 Following such, Brenden sheepishly began presenting his case before the Board, testing to see whether
29 the Board would acknowledge McNair’s motion and Brenden’s unethical appearance.

1 In a manner that can only serve as further proof of McNair’s assertion that the Board held a “sham” of a
2 hearing intending to willfully deny McNair due process, it ignored Brenden’s unethical appearance and
3 McNair’s motion attempting to end such, and allowed Brenden to act as counsel for the County.

4 To compound his unethical acts in this case, Brenden has since attempted to assert himself as counsel for
5 individual defendants Kenneth Medlin, Terry Peterson, and Jennipher Ramsey.

6 As stated earlier, in letters to McNair, Brenden stated that he would be personally involved in the
7 “investigation” of the complaints against Medlin, Peterson, and Ramsey. Brenden’s involvement in this
8 investigation shows not only that Brenden is a critical and material witness for this case, it also shows that
9 the County has an adversarial stance towards defendants Medlin, Peterson, and Ramsey in this matter.

10 The County has been named as a defendant due to its own prohibited acts against McNair, separate from
11 those acts of Medlin, Peterson, and Ramsey. Given this situation where Brenden must investigate and
12 prosecute the acts of Medlin, Peterson, and Ramsey, and in the mean time represent the interests of the
13 County, Brenden is therefore placed in conflict of interest between of all those parties. ER 1.7 clearly
14 prohibits Brenden from placing himself in this situation, and requires him to abandon Medlin, Peterson, and
15 Ramsey.

16 From the onset of McNair’s complaints to the County in July of 2002, Brenden (and the County) has
17 maintained an attitude of deliberate interference with McNair’s right to discovery and disclosure. Brenden
18 (and the County) has done all it can to prevent McNair from lawful discovery, including complete and
19 absolute refusal to allow McNair access to any requested documents. This is compounded by Brenden’s
20 (and the County’s) continued acts of interference with McNair’s right to due process. ER 3.4 strictly
21 prohibits this type of activity, yet Brenden (and the County) ignore this.

22 Brenden’s interference with McNair’s public record requests not only constitutes criminal activity, it
23 also make Brenden liable for civil action by McNair. This makes Brenden’s interest in this case a personal
24 one. Since the manner in which this case proceeds, and the outcome of this such will serve to have personal
25 impact upon Brenden’s own interests, ER 1.7 bars him from acting as counsel for anyone in this matter.

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V. SUMMARY

ER 3.7 (a) specifically bars Brenden from acting as an advocate for anyone in this case because he declared to be a witness in such.

ER 1.7 bars Brenden from representing Medlin, Peterson, and Ramsey, as it would be a conflict of the County's interests, and the interests of the individual Defendants Medlin, Peterson, and Ramsey.

Brenden's interest in this case is personally motivated, and therefore ER 1.7 (b) bars Brenden from representing anyone in this matter.

Brenden has from the beginning been faced with multiple points that would constitute a conflict of interest of for the County, Medlin, Peterson, Ramsey, and himself. Under ER 1.16 he should have never begun his representation of anyone, and under the same rule Brenden should have voluntarily removed himself.

The actions of Brenden (and the County) in this matter have been unethical, unlawful, and criminal. They have consciously and intentionally violated ethic rules to an extent that overwhelms the Court with arrogance and seeks to compromise the Court's integrity by design for their own benefit.

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VI. CONCLUSION

Brenden is clearly barred from acting as an advocate in this case. Since he refuses to voluntarily remove himself as required by law, he therefore forces the Court to remove him.

The unethical acts of Brenden and the County are of such an egregious nature that the Court is compelled to impose harsh sanctions upon them both to prevent any further such behavior or attempts to compromise the integrity of the Court.

RESPECTFULLY SUBMITTED this 15th day of AUGUST 2003.

By _____

Scott M. McNair
Plaintiff (Pro Per)

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ORIGINAL and copy of the foregoing FILED this 15th 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 15th day of AUGUST 2003 to Defendants:

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By _____

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