

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
Plaintiff

8 V.

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

CASE No. LC2003-000539-001

**STATEMENT OF PLEADINGS AND
REQUEST FOR CLARIFICATION ON
FILING INSTRUCTIONS**

(Assigned to the Honorable Michael D. Jones)

12
13 **I. PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS**

14 In that the Plaintiff (McNair) is neither represented by counsel nor had any formal legal training, he
15 does hereby request leniency from the Court for the form and content of this pleading.

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

19
20 **II. SCOPE AND SUBJECT OF PLEADING**

21 On September 22 2003, a pre-trial conference in this matter was held before the Honorable Michael
22 D. Jones. Prior to these proceedings, the Plaintiff and the Defendant(s) had submitted a number of
23 motions to the Court, yet no rulings on such had been issued.

24 Since the outcome of these motions would determine the manner in which the Court would proceed
25 with this action, it was anticipated that the Court would rule upon such during the pre-trial conference.
26 During this such, it was discovered that Judge Jones had not received copies of any of the pleadings
27 previously filed by McNair (This includes McNair's motions & replies, and his responses to motions
28 submitted by the Defendants.)

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

1 While McNair (a non-attorney) had previously filed the originals of his pleadings with the Clerk of
2 the Court, he did not “hand-deliver” copies to Judge Jones’s “inbox”. Subsequently, the Court ruled
3 upon issues without reviewing or considering pleadings filed by McNair that related to those issues.

4 The purpose of this pleading is to: 1) Inform the Court and all parties that per the instructions of
5 Judge Jones, on this date copies of all motions, responses, and replies filed by McNair with the Clerk of
6 the Court have been hand-delivered to the Judge’s “inbox” on the fourth floor of the Maricopa County
7 Superior Court Building located at 201 West Jefferson, Phoenix, Arizona; 2) Summarize the status of
8 those pleadings in question; 3) Request a clarification from the Court as to the need/requirement for
9 copies of pleadings to be hand-delivered to Judge Jones’s “inbox”.

10
11 **III. STATUS OF MOTION FOR TRIAL DE NOVO & TRIAL BY JURY**

12 On July 7 2003, McNair filed a *Motion for Trial De Novo & Trial by Jury*.

13 Allowing five days for delivery by mail and ten days for responses to be prepared by the Defendants,
14 responses from the Defendants would be due no later than close of business Tuesday July 22, 2003.

15 On July 23 2003, Mr. Daniel Brenden (Brenden) filed a response on behalf of Defendants Maricopa
16 County Department of Transportation (MCDOT), Medlin, Peterson, and Ramsey.

17 On July 28 2003, Mr. Craig Mousel (Mousel) filed a response on behalf of Defendant Arizona State
18 Personnel Board.

19 On August 1 2003, McNair filed a reply to this motion.

20 According to A.R.C.P.² Rule 7.1, the failure of the Defendants to respond within the time allowed
21 constitutes a “Non-Compliance”, and under such, the non-compliance “*may be deemed a consent to the*
22 *denial or granting of the motion, and the court may dispose of the motion summarily.*”

23 On September 22 2003, without reviewing McNair’s motion or reply, or accepting oral argument,
24 the Court verbally and summarily denied such at the pre-trial conference.

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² A.R.C.P. refers to the *Arizona Rules Of Civil Procedure for the Superior Courts of Arizona*

1 Counsel for the Defendants either denied having received such, or would not verify receipt of such
2 or whether it had been provided to the Superior Court.

3 Following this, the Court questioned McNair in detail as to when, how, and to whom he had
4 delivered the transcript to. McNair stated that he had personally hand-delivered copies to the Board, and
5 mailed a copies to Counsel for Maricopa County Department of Transportation (MCDOT) and to each
6 of the individual Defendants (Medlin, Peterson, and Ramsey).

7 To clarify any dispute concerning the preparation and delivery of such, attached (Exhibit A) is a
8 copy of the cover page of the transcript provided to the Board. The Court should note the presence of the
9 Board's "receipt stamp" showing that such was received by the Board on April 15 2003.

10 At the September 22 2003 pre-trial conference, the Court made no ruling upon this motion. Hence,
11 the Board continues to refuse to comply with J.R.A.D. Rule 5 and A.R.S. § 12-904.

12 13 **VI. STATUS OF MOTION TO AMEND COMPLAINT**

14 On July 23 2003, McNair file a *Motion to Amend Complaint*.

15 None of the Defendants have filed a response to this motion

16 According to A.R.C.P. Rule 7.1, the failure of the Defendants to respond constitutes a "Non-
17 Compliance", and under such, the non-compliance "may be deemed a consent to the denial or granting
18 of the motion, and the court may dispose of the motion summarily."

19 At the September 22 2003 pre-trial conference, the Court made no ruling upon this motion.
20

21 **VII. STATUS OF MOTION FOR DEFAULT JUDGMENT**

22 On July 23 2003, McNair filed a *Plaintiff's Motion for Default Judgment*.

23 Counsel for Defendants filed responses within the time allowed.

24 On August 15 2003, McNair filed a reply.

25 At the September 22 2003 pre-trial conference, the Court made no ruling upon this motion.
26

27 **VIII. STATUS OF MOTION TO COMPEL SEPARATION OF PARTIES AND COUNSEL**

28 On July 28 2003, McNair filed a *Motion to Compel Separation of Parties and Counsel*.

29 None of the Defendants have filed a response to this motion

1 According to A.R.C.P. Rule 7.1, the failure of the Defendants to respond constitutes a “Non-
2 Compliance”, and under such, the non-compliance “*may be deemed a consent to the denial or granting*
3 *of the motion, and the court may dispose of the motion summarily.*”

4 At the September 22 2003 pre-trial conference, the Court made no ruling upon this motion.
5

6 **IX. STATUS OF SEPARATE MOTION AND ORDER TO DIRECT PLAINTIFF’S**
7 **COMMUNICATIONS TO DEFENDANT’S COUNSEL**

8 On August 5 2003, Brenden filed a *Separate Motion And Order To Direct Plaintiff’s*
9 *Communications To Defendant’s Counsel.*

10 On August 20 2003, McNair filed a response to such.

11 Brenden filed no reply.

12 Though the basis of this motion was dependant upon McNair’s *Motion to Compel Separation of*
13 *Parties and Counsel*, which the Court has not yet ruled upon. At the September 22 2003 pre-trial
14 conference, without reviewing or considering McNair’s response to this motion, and ignoring McNair’s
15 verbal argument that MCDOT had no legal authority to represent the Defendants (Medlin, Peterson, &
16 Ramsey), the Court summarily granted this motion.
17

18 **X. STATUS OF MOTION TO COMPEL WITHDRAWAL OF COUNSEL AND**
19 **REQUEST FOR SANCTIONS**

20 On August 15 2003, McNair filed a *Motion To Compel Withdrawal Of Counsel And Request For*
21 *Sanctions* against Brenden for his continued refusal to abide by Arizona State Bar Ethics Rules and
22 voluntarily withdraw as Counsel for Defendants MCDOT, Medlin, Peterson, & Ramsey, in that Brenden
23 was a witness in this case and therefore barred from representing anyone in this matter.

24 None of the Defendants have filed a response to this motion.

25 According to A.R.C.P. Rule 7.1, the failure of the Defendants to respond constitutes a “Non-
26 Compliance”, and under such, the non-compliance “*may be deemed a consent to the denial or granting*
27 *of the motion, and the court may dispose of the motion summarily.*”

28 On August 25 2003, Brenden filed a *Notice of Association to Counsel* requesting that Mary C.
29 Cronin (Cronin) be associated with him as counsel for Defendants MCDOT, Medlin, Peterson, &
30 Ramsey.

1 On September 22 2003, Brenden failed to appear at the pre-trial conference to answer to the motion
2 for sanctions against him.

3 Instead, Cronin appeared as substitute counsel, even though the Court had not yet ruled to allow the
4 *Association of Counsel*. (The Court should note that neither Brenden nor Cronin filed appropriate
5 pleadings and written approval from any of their clients to allow this, as required by A.C.R.P. 5.1)

6 At the September 22 2003 pre-trial conference, the Court made no ruling upon this motion.
7

8 **XI. SUMMARY OF PLEADINGS' STATUS**

9 There are numerous pleadings before the Court that will determine the manner in which the Court
10 and the parties involved will proceed.

11 Some of the motions submitted by McNair were not answered by the Defendants, and accordingly
12 gives the Court cause to summarily grant them on McNair's behalf.

13 Since many of the motions and pleadings are dependant upon each other, to insure that a fair and just
14 determination can be made, and to preserve equitable justice and due process towards the Plaintiff, the
15 Court should reserve issuing rulings until it has had opportunity to review all motions and pleadings.
16

17 **XII. REQUEST FOR CLARIFICATION OF OBLIGATION TO HAND-DELIVERING** 18 **PLEADINGS TO JUDGE JONES**

19 At the September 22 2003 pre-trial conference, the Court took great exception with the fact that
20 McNair (a non-attorney) had failed to hand-deliver copies of his pleadings directly to Judge Jones (in
21 addition to filing originals with the Clerk of the Court.)

22 Though McNair is a non-attorney not intimately familiar with the inter-workings of the Superior
23 Court system, he was under the impression that the original and a copy of all pleadings were required to
24 be filed with the Clerk of the Court. McNair had attempted to do so, but was misled or misinformed by
25 the Clerk of the Court concerning the copy destined for the presiding Judge. McNair's intent to provide
26 a copy to the Judge is further evident in the Certificate of Service attached to his motions, in which he
27 clearly states, "*ORIGINAL and copy of the foregoing FILED this...*"

28 The error of this situation is further complicated by the fact that attorneys for the Defendants have
29 filed responses to some of McNair's motions directly with Judge Jones's office, yet no one from his staff
30 recognized or acted upon the situation, where they had received responses to motions that were missing.

1 In order to appease the wishes of the Court, McNair conceded to delivering copies of his pleadings
2 directly to Judge Jones. But, since the Judge’s chambers are in a secure area limited only to court
3 personnel which prevents McNair from accessing such, McNair was at a loss as how to he could
4 accomplish this task.

5 At the pre-trial conference McNair requested specific instructions from the Court as to how to
6 complete these delivery requirements. To add further to McNair’s confusion, the Court instructed him to
7 “hand-deliver” copies of pleadings to the Judge’s “inbox” on the “fourth” floor of the Maricopa County
8 Superior Court building. (It mystifies McNair as to how a lay person such as himself, or even a visiting
9 attorney from another state, would know that the “inbox” would be located on the fourth floor for a
10 Judge whose chambers are located on the tenth floor.)

11 In contradiction to the directives imposed upon McNair, are the methods in which copies of
12 pleadings by counsel for the Defendants have been delivered. In pleadings from Mousel, he states
13 “*Copy of the foregoing mailed this...to Honorable Michael D. Jones...*” In pleadings from Brenden, he
14 states, “*...and copy HAND-DELIVERED this...to Honorable Michael D. Jones...Central Court*
15 *Building, Suite 10A...*”

16 Given the above, it would appear that not only is there no uniform method being employed to deliver
17 copies of pleadings to Judge Jones, it would also appear that McNair was unjustly chastised and
18 penalized by the Court for the manner in which he attempted to file his pleadings as a Plaintiff Pro Per.

19 While McNair is not an attorney, he has extended great effort to review and comply with the Rules
20 of Civil Procedure for the Superior Courts of Arizona. In reviewing such, McNair could find only one
21 rule or statute pertaining to the filing of pleadings. That being A.R.C.P. Rule 5(h), which reads:

22
23 Rule 5(h). Filing with the court defined
24 The filing of pleadings and other papers with the court as required by these Rules shall be
25 made by filing them with the **clerk of the court**, except that the judge may permit the
26 papers to be filed with the judge and in that event the judge shall note thereon the filing
27 date and forthwith transmit them to the office of the clerk.

28 According to the above, it appears to McNair that he has complied with the statutory requirement for
29 the filing of pleadings. By the above, it would appear that the instructions of the Court conflict with this
30 rule, and that the methods of delivery employed by Brenden and Mousel differ from both this rule and
from the instructions of the Court to McNair.

1 Because of this ambiguous situation, McNair does hereby graciously request the Court to clarify as
2 to what uniform manner and method should be employed by all parties in the filing of pleadings in this
3 matter, and, the statutory or legal basis for such.

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7 RESPECTFULLY SUBMITTED this 25th day of SEPTEMBER 2003.

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9 By _____

10 Scott M. McNair, Plaintiff Pro Per
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Filed and delivered, this 25th day of SEPTEMBER 2003.

By _____

Scott M. McNair, Plaintiff Pro Per

ORIGINAL of the foregoing FILED with:

Clerk of the Court
Superior Court of Arizona, Maricopa County
201 West Jefferson Street
Phoenix, Arizona 85003

COPY of the foregoing HAND DELIVERED to:

Honorable Michael D. Jones
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

COPIES of the foregoing MAILED to Defendants:

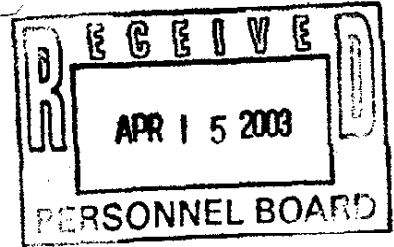
Sunberg & Mousel
Attn: Craig Mousel
934 West McDowell Road
Phoenix, Arizona 85007
(Counsel for Defendant, The State of Arizona Personnel Board)

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,
Medlin, Peterson, & Ramsey)

EXHIBIT A

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THE STATE OF ARIZONA
PERSONNEL BOARD



SCOTT M. MCNAIR
Complainant

V.

MARICOPA COUNTY DEPARTMENT OF
TRANSPORTATION, et al
Respondents

DOCKET NO. 02-56

HEARING TRANSCRIPT

February 10, 2003

9:00 AM

(Pages 1 to 58)

Hearing Officer: Harold J. Merkow

Complainant: Scott M. McNair

Respondent: Maricopa County Department of Transportation, et al

Respondent Attorneys:

Daniel R. Brenden, State Bar No. 016395

Mary C. Cronin, State Bar No. 010816

Respondent Witnesses:

Espy Gamez

Janice Stratton

Barbara Rees