

1 Scott M. McNair
(Plaintiff, Pro Per)

2 [REDACTED]
Phoenix, Arizona [REDACTED]

3
4 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
5 **IN AND FOR THE COUNTY OF MARICOPA**

6 SCOTT M. MCNAIR
7 Plaintiff

CASE No. LC2003-000539-001 DT

8 V.

MOTION FOR EVIDENTIARY HEARING

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

(Assigned to the Hon. 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 **II. REQUEST FOR EVIDENTIARY HEARING**

20 In that the there exists questions concerning a number factual issues in this case, questions
21 concerning the sufficiency of the record, and, in that the memorandum issued on February 18 2004 by
22 the Hon. Michael D. Jones specifically allows for the request of an evidentiary hearing, the Plaintiff
23 (McNair) does hereby request that an evidentiary hearing be held in this matter.

24 ...

25 ...

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

1 **III. ISSUES TO BE ADDRESSED**

2 The Plaintiff does hereby request the Court to accept testimony and evidence on the issues related to,
3 but not limited to, the following:

- 4 1. Did the County willfully interfere with McNair’s right to Discovery and Disclosure, thereby
5 making the record incomplete and denying him due process?
- 6 2. Was a hearing of the issues and substance of McNair’s complaint **ever** held by the Board?
- 7 3. Was the “evidentiary hearing” held by Hearing Officer Harold J. Merkow on February 10
8 2003, conducted in a manner that was contrary to law, arbitrary, capricious, an abuse of
9 discretion, and a denial of due process to McNair?
- 10 4. Was the recommendation of Hearing Officer Harold J. Merkow, contrary to law, arbitrary,
11 capricious, or an abuse of discretion, and was it issued in accordance with statute?
- 12 5. Was the Plaintiff entitled to “equitable tolling” of his complaint?
- 13 6. Did the Board act in a manner that was contrary to law, arbitrary, capricious, an abuse of
14 discretion, or denial of due process to McNair?
- 15 7. Did the Board fail to properly index, certify, submit, and distribute its record as required by
16 J.R.A.D. Rule 5, thereby making the “completeness of the record” uncertain?
- 17 8. Has McNair been denied ample access to, proper disclosure of, and appropriate copies of the
18 record of this matter, thereby interfering with and denying him his right to due process?
19

20 **IV. DISCUSSION**

21 This action was filed under the Administrative Review Act² as an appeal of a “*Whistleblower*
22 *Complaint*” before State of Arizona Personnel Board (Board), case 02-056.

23 In the first issue, McNair’s has recurrently asserted that the County has continually interfered with
24 (refused) McNair’s requests for discovery and disclosure in this matter, both before the Board and in this
25 court. Since the question of the sufficiency of the record is directly bound to the amount or lack of

² See A.R.S. §§ 12-901 to -914

1 disclosure, the court is then duty bound to explore this issue by accepting testimony and evidence on the
2 County's conduct concerning disclosure and discovery.

3 In reference to the second issue, McNair has repetitively asserted by motion that he is entitled to a
4 "trial de novo" and "trial by jury" before this court by statute. The question as to whether or not he is
5 entitled to such, is a question of fact and law. Therefore, the court must cautiously review the record and
6 evidence surrounding these issues to make an accurate conclusion concerning such. To do so, the court
7 must ensure that the record is complete concerning all evidence relevant to support or deny McNair's
8 demand. In his Minute Entry of September 22 2003, Judge Jones denied McNair's motion for such, yet
9 included the opportunity for McNair to "reurge if the administrative record is incomplete in his case".

10 In addressing issues three and four, it is the superior court that "determines whether the
11 administrative action was illegal, arbitrary, capricious, or was an abuse of discretion"³. With this in
12 mind, the court must then offer McNair the opportunity to submit evidence and testimony in to the
13 record in order for the court to make a just determination of such.

14 Issue five is clearly a statutory one. Questions of statutory interpretation involve questions of law
15 and the appellate court is not bound by the administrative agency's conclusion.⁴ Since McNair has **never**
16 been offered the opportunity to submit evidence or testimony on the circumstances surrounding the
17 filing his complaint, the court must therefore offer him the opportunity to complete the record on this
18 issue now.

19 Since issue six is one where the court must also determine whether the Board acted in a manner that
20 was contrary to law, arbitrary, capricious, an abuse of discretion, it must ensure that the record is
21 complete concerning the circumstances surrounding the Board's actions.

22 Issues seven and eight are recurring ones in this case. McNair is required to base his pleadings upon
23 the record. A record founded upon the record submitted by the Board. It is therefore the duty of the
24 Court to ensure that Board has **unquestionably fulfilled** its duty to certify and transmit the record **and**
25 **index** of its proceedings. It is also the duty of this court to insure that McNair has ample disclosure of

³ A.R.S. § 12-910(G), Siegel v. Arizona State Liquor Board, 167 Ariz. 400, 401, 807 P.2d 1136 (App. 1991)

⁴ Siegel, 167 Ariz. 401

1 and access to that same record. Since McNair has continually raised questions concerning the
2 sufficiency, accuracy, and accessibility of the record, the court is therefore obligated to factually
3 establish that these issues have been overcome.

4
5 **V. SUMMARY**

6 In Judge Jones' minute entry of September 22 2003, he asserts that McNair could be entitled to a
7 trial de novo if the record was found to be incomplete.

8 There exist numerous issues of fact and law that are not clearly dispositive by the record, or in which
9 the sufficiency of the record about such is in question.

10 By Judge Jones' own memorandum of February 18 2004, he has suggested that the need for an
11 evidentiary hearing would necessary to resolve issues surrounding this action.

12
13 **VI. CONCLUSION**

14 There is good cause and grounds for the Court to hold an evidentiary hearing in to the issues raised.
15 So that it may illuminate it self on those issues, and to insure that the record is complete, accurate and
16 accessible to all parties.

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18
19
20 DATED this 10th day of MARCH 2004.

21
22 By _____

23 Scott M. McNair, Plaintiff Pro Per
24
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26
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1 FILED and delivered this 10th day of MARCH 2004.

2
3 By _____

4 Scott M. McNair, Plaintiff Pro Per

5
6 ORIGINAL of the foregoing FILED with:

7 Clerk of the Court
8 Superior Court of Arizona, Maricopa County
9 201 West Jefferson Street
Phoenix, Arizona 85003

10 COPY of the foregoing HAND DELIVERED to:

11 Honorable Michael D. Jones
12 Maricopa County Superior Court
13 201 West Jefferson
Phoenix, Arizona 85003

14 COPIES of the foregoing MAILED to Defendants:

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

19 Office of the Maricopa County Attorney
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22 Phoenix, Arizona 85004
23 (Counsel for Defendants: Maricopa County, Maricopa County Department of Transportation,
24 Medlin, Peterson, & Ramsey)
25
26
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