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Attorneys for Defendant Maricopa County

MARICOPA COUNTY EMPLOYEES MERIT SYSTEM COMMISSION

SCOTT M. MCNAIR,

Complainant,

v.

MARICOPA COUNTY, Andrew  
Kunasek, David Smith, Fulton Brock,  
Mary Rose Wilcox, Max Wilson, Don  
Stapley, Richard Romley, David  
Smith, John Doe, and Jane Doe,

Defendants.

**RESPONDENTS' RESPONSE TO  
COMPLAINANT'S MOTION FOR  
DISQUALIFICATION OF COUNSEL**

Respondents by and through undersigned Counsel hereby submit its response to Complainant's request to disqualify Counsel, Daniel Brenden and Mary Cronin. In a letter addressed to Janice Stratton, Merit Systems Administrator dated June 29, 2004, Complainant stated that "Daniel Brenden and Mary Cronin

are expected to be called as witnesses in this matter." Complainant further asserted that "according to Arizona State Bar Ethics Rule 1.7, since they are expected to be called as witnesses, they are precluded by law from representing anyone other than themselves in this matter." This assertion is a misinterpretation of the rule and an inaccurate statement of the law.

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest arises from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. 17A A.R.S. Sup. Ct. Rules, Rule 42, Rules of Professional Conduct, E.R. 1.7.

A party's mere declaration of intention to call opposing counsel as witness is insufficient basis for disqualification even if that counsel could give relevant testimony. Security General Life Insurance v. Superior Court in and for the County of Yuma, 149 Ariz. 332, 718 P.2d 985. The court has held that an attorney is not disqualified from representing a client... absent showing that information contained in attorney's testimony could not have been obtained by other witnesses. Arizona State Bar Ethics Rule 3.7 requires that a lawyer-witness be a "necessary witness" for the purpose of disqualifying counsel. The proposed testimony must be relevant and material and the testimony must be unobtainable elsewhere. The court found that the ethical rules established standards that protect the rights of a party to counsel of his choice and prevent abusive disqualification of counsel by an opponent. Security General Life Insurance v. Superior Court in and for the County of Yuma, 149 Ariz. 332, 718 P.2d 985.

Complainant has failed to provide any factual basis or law to support his attempt to disqualify Respondents' counsel despite being given the opportunity by the Hearing Officer to supplement his disqualification assertion.

Complainant has not set forth in detail all matters to which Mr. Brenden and Ms. Cronin are expected to testify as ordered by the Hearing Officer. In fact, Complainant has not set forth one matter Complainant expects Respondents' counsel to testify.

Complainant's motion for disqualification is encased in a fragile assertion that Daniel Brenden and Mary Cronin are expected to be called as witnesses, supported by Complainant's misinterpretation of the ethics rules and inaccurate statement of the law.

For the foregoing reasons, Counsel asserts that Dan Brenden and Mary Cronin be allowed to remain as counsel for above-named Respondents.

Dated this 19 day of August 2004.

RICHARD M. ROMLEY  
MARICOPA COUNTY ATTORNEY

By: DAW Brenden

MARY C. CRONIN  
Deputy County Attorney  
Attorneys for Defendant Maricopa County

ORIGINAL of the foregoing hand-delivered  
this 19<sup>th</sup> day of August 2004, to:

Janice Stratton  
Merit System Commission Administrator  
301 West Jefferson Street, Suite 219  
Phoenix, Arizona 85003

and COPY of the foregoing mailed to:

David Gering, Esq.  
Hearing Officer  
1628 E. Southern, #9-303  
Tempe, Arizona 85282

Scott M. McNair

[REDACTED]

Phoenix, Arizona [REDACTED]

Complainant Pro Per

*Scott M. McNair*

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