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Scott M. McNair
Phoenix, Arizona

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

SCOTT M. MCNAIR
Plaintiff,
V.
County of Maricopa, et al,
Defendants,

No. **CV-03-2119-PHX-NVW**
**PLAINTIFF'S REPLY TO
DEFENDANT'S SETTLEMENT
CONFERENCE REPORT AND
AFFADAVIT**
Assigned to the Hon. Neil V. Wake

I. PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS

In that the Plaintiff (McNair) is neither represented by counsel nor had any formal legal training, he does hereby request leniency from the Court for the form and content of this pleading, and does request the Court to waive and/or modify any formal procedural requirements in order to insure McNair due process and equitable justice, and to insure that a fair and just determination can be made. Moreover, as McNair is a pro se litigant and not an attorney, his pleadings must be considered without technicality. (*Pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.* ¹)

¹ Haines V. Kerner, 92 S.Ct. 594; Jenkins V. McKeithen, 395 US 411, 421 (1969); Picking V. Penna. Rwy. Co. 151 F.2d 240; Puckett V. Cox, 456 F.2d 233.)

1 **II. PREFACE**

2 The Plaintiff, does hereby reply to the “DEFENDANTS’ RESPONSE TO PLAINTIFF’S
3 SETTLEMENT CONFERENCE REPORT.”

4 Plaintiff asserts to the Court that Defendants Response and its accompanying (perjurous)
5 affidavit were deliberate misrepresentations of the facts intended to distract the Court’s attention
6 from the main issues that the Defendant’s blatantly defied Judge Wakes order by intentionally failing
7 to 1) appear in person, and, 2) participate in ”Good Faith Settlement Talks”.

8 Plaintiff further asserts to the Court that Emilee Eckroad’s affidavit was premeditated perjury
9 intended as a means of “damage control” for Defendants’ intentional defiance of Judge Wake’s
10 Order.

11 **III. STATEMENT OF FACTS**

12 On June 23 2004, Judge Wake issued a Case Management Order in this case.

13 According to Item 8 of such, Judge wake specifically and unambiguously ordered,

14 “All parties and their counsel shall meet in person and engage
15 in good faith settlement talks no later than March 15, 2005.”

16 In compliance with such, on February 27 2005, the Plaintiff contacted counsel for the Defendants
17 (Daniel Brenden) by letter to schedule a *Good Faith Settlement Conference* at a time and place of
18 mutual convenience to all parties. In Plaintiff’s letter to Brenden, he explicitly echoed Judge Wake’s
19 requirement that **ALL** parties (specifically the individual Defendants) be physically present at the
20 conference.

21 Brenden responded on behalf of the Defendants and a conference date of March 9 2005 was
22 mutually agreed upon.

23 When Plaintiff arrived at the County’s office on March 9, he became immediately aware that the
24 individual Defendants were not present, and neither was their counsel of record Ms. Mary Cronin.

1 Upon entering the County's conference room, Plaintiff discovered an unknown woman present.
2 This person identified herself as "Emilee Eckroad". Eckroad then stated to the Plaintiff that she was
3 with the County's Risk Management Department, and that is was "*customary for her to be present*
4 *at negotiations.*"

5 At no time did Ms. Eckroad assert that she was in any way authorized to negotiate on behalf of
6 anyone.(emphasis added)

7 Plaintiff then inquired as to whereabouts of the individual Defendants. To which Brenden
8 responded with, "*I am authorized to negotiate on behalf of all the Defendants.*"

9 Plaintiff then asked if the individual Defendants would be coming, to which Brenden gruffly
10 responded with, "*Do you see them here?*"

11 Plaintiff then repeatedly asked for a "straight yes or no answer" as to whether the Defendants
12 would be attending the conference. Eventually, Brenden responded with "NO".

13 Plaintiff then reminded Brenden that in his letter concerning scheduling the conference, he
14 specifically stated that it would be essential for the individual Defendants to be present at the
15 settlement conference. To which Brenden replied, "*You write a lot of letters...*"

16 While Eckroad remained completely silent throughout the meeting, Brenden projected an attitude
17 that was blatantly inflammatory and confrontational.

18 At one point, Brenden snapped at the Plaintiff with,

19 "*What will it take to put an end to this BULLSHIT?*"

20 Since it was clear that Brenden was attempting to goad Plaintiff into some form of skirmish,
21 Plaintiff took extra care to remain calm and civil.

22 When asked repeatedly to introduce some form of starting point for negotiation, Brenden
23 repeatedly stated that the Defendants had "nothing" to offer.

24 ...

1 Brenden went on to state that regardless of any proposal the Plaintiff submitted, it would not be
2 accepted or agreed to by the Defendants at the conference.

3 Though Brenden made no attempt to divulge the Defendants' legal strategy, by Brenden's own
4 admission, when Plaintiff refused to reveal his, Brenden began mocking him.

5 Upon realizing that his confrontational attitude and belittlement would not incite the Plaintiff
6 into a battle of words, nor provoke Plaintiff into leaving the conference, Brenden ended the
7 conference by "dismissing" the Plaintiff.

9 IV. DISCUSSION

10 Throughout the history of this case, and even before it's filing, the Defendants have routinely
11 refused to hold or attend negotiations with the Plaintiff in any venue.

12 As the record of this case (and related cases) will show, Defendants have used all means
13 possible, including unethical and criminal acts, to obstruct the Plaintiff's attempts at due process.

14 In example of such, counsel for the Defendants (Daniel Brenden) was long ago listed as a
15 primary witness in this (and related cases), and each time, in defiance of both his oath of ethics and
16 the Plaintiff, subsequently named himself as counsel and refuses to remove himself.

17 Furthermore, the Court shall take notice of how Brenden has persistently obstructed discovery,
18 criminally attempted to extort money from the Plaintiff for copies of public records he is entitled to
19 for free, and harassed the Plaintiff with unfounded and baseless threats to "*inform the court*" of non-
20 existent disclosure issues with the Plaintiff.

21 The Court should also be aware of how Brenden has not only interfered with Plaintiff's attempts
22 to subpoena witnesses by withholding the names and addresses of those in Defendants' employ, but
23 Brenden has moreover withheld that at least one of the Defendants has changed their name and
24 address without proper notification to the Court (or Plaintiff).

1 Judge Wake's order instructing that all parties and all counsel be present for good faith
2 settlement talks is crystal clear and unambiguous. Defendants deliberately and blatantly defied this
3 order. Not only did the Defendants fail to appear in person, but counsel of record (Cronin) was also
4 absent.

5 Since this defiance of Judge Wake's order by the Defendants is irrefutable, Brenden dares not
6 deny it. Nor does Brenden provide even the slightest explanation for his defiance of Judge Wake.

7 The intention of Judge Wake's order was that all parties (and all counsel) be present with the aim
8 and ability to enter into an agreement at the time of the conference.

9 By their failure to appear as ordered, the general demeanor of Brenden, and the irrefutable fact
10 (and self-admission) that the Defendants never made any offer, they thereby show the Court that
11 there was no "good faith" effort their part.

12 All parties were required to bring "some offer" to the conference. Defendants failed to bring
13 even a minimal offer to the table. Though Plaintiff continually stated he would consider any offer or
14 starting point introduced, Defendants stated they had "nothing" to offer.

15 They now attempt to divert the Courts attention for their unscrupulous acts (and defiance of
16 Judge Wake's order) by their (perjurous) allegation that the Plaintiff refused to negotiate.

17 By their own admission, if Plaintiff had offered to settle for as little as a six-pack of warm beer
18 and a cold hotdog, Defendants would have refused to agree upon such at the conference. If no offer
19 from the Plaintiff would be acceptable, why should he make one?

20 Defendants' bad faith effort is further exemplified by their contention that the only thing in
21 controversy is a "dollar amount". Plaintiff's claims are based upon numerous unlawful acts and
22 retaliation issues. Defendants clearly refuse to take notice of or steps to prevent any future violations
23 of other persons' constitutional rights. Defendants' only intention is to throw money (public tax
24 dollars) at the issues, and then continue there unlawful acts unabated.

1 In further example of Defendants insincere intention and questionable credibility, is the
2 unannounced and unauthorized appearance of Ms. Emilee Eckroad, and her perjurous affidavit.

3 Nowhere in this case's history is there any mention of Eckroad prior to her mystical appearance
4 at the conference. Though she now contends that she was "authorized" to negotiate on behalf of the
5 individual Defendants, she fails to produce any written and notarized exhibit to support such. At
6 what date, under which circumstances, and by whom did she gain this authorization so late in the
7 game?

8 In fact, Plaintiff challenges Eckroad's statement that she is/was authorized, and further asserts to
9 this Court that Eckroad never informed him of such. Plaintiff contends that this is a deliberate act of
10 perjury by Eckroad. (The "signature" on Eckroad's affidavit if real, is itself bizarre.)

11 Plaintiff contends that after being introduced to Eckroad, Eckroad sat silent for the entire length
12 of the conference. This is supported in that nowhere in Eckroad's affidavit or Brenden's report does
13 either assert her ever having made any suggestions, offers, or other statements during the conference.

14 As the Plaintiff previously stated, after being introduced to Eckroad, she told him that it was
15 "customary" for her to be present at negotiations. Her statements are further contradicted by
16 Brenden's own statement, "I [Brenden] am authorized to negotiate on behalf of all the Defendants".

17 Lastly, is the issue of a "joint" settlement report.

18 While Brenden attempts to emphasize that Plaintiff filed a separate report, Brenden fails to
19 provide any explanation for his failure to propose a joint one. (Brenden again defies Judge Wake's
20 order.)

21 Brenden is a bar certified attorney, experienced in litigation, with a full support staff at his
22 beckoned called. Brenden was in possession of Judge Wake's order, knew of its requirement for a
23 join settlement report, and made no effort to contact the Plaintiff or comply with such.

24 Other than deliberately defying Judge Wake's order, can Brenden explain why he (or one of his

1 many assistants) couldn't even call the Plaintiff to discuss a joint report?

2 In previous instances where this Court had required "joint" pleadings, Brenden (and Cronin)
3 have a history of obstruction. In fact, Judge Wake acted of his own accord when he issued the Case
4 Management Order in question. This was due greatly to Defendants' uncooperative behavior
5 towards the Plaintiff.

6 In the Plaintiff's defense, he is not an attorney, has no legal training, and does not he have a
7 "staff" to perform his administrative or scheduling functions.

8 For the Court's review, the Plaintiff has included a copy of a letter that was sent to Brenden on
9 March 15 2005. In it, Plaintiff brings the issue of a "joint" report to Brenden's attention.
10 Unfortunately, Plaintiff was under the impression that the parties had ten business days instead of
11 five to file a joint report. (This fact either eluded Brenden or he chose to ignore, in his continuing act
12 of defiance against this Court's instructions.)

13 Upon realizing his error, and though a day late, Plaintiff produced a terse and truthful report that
14 was immediately filed with the Court.

15 On the other hand, not only did Brenden fail to address the issue of a joint report all-together, his
16 response included a perjurous affidavit from a mysterious party, causes the Court to question his
17 credibility and motives, and was not even filed until March 21. Almost a week after the Plaintiff's
18 report, and six days late according to Judge Wake's instructions.

19 V. SUMMARY

20 The Defendants and their counsel intentionally defied this Court's instructions to appear in
21 person at a "*good faith*" settlement conference.

22 Defendants deliberately defied this Court's instructions to negotiate in "*good faith*".

23 Defendants', through Eckroad and Brenden have conspired to compromise the integrity of this
24 Court with their preposterous report and perjurous affidavit.

1 **VI. CONCLUSION**

2 The actions of the Defendants are an affront to everything this Court represents and should be
3 met with immediate and severe sanctions. (The trial court has great discretion in deciding whether to
4 sanction a party and how severe a sanction to impose. *State v. Delgado*, 174 Ariz. 252, 256, 848 P.2d
5 337, 341 (App. 1993)).

6 Following an order from the Court that all Defendants provide their full (real) names and current
7 addresses to the Court (and Plaintiff), severe monetary sanctions should be imposed personally upon
8 the individual Defendants (Medlin, Peterson, & Ramsey), and counsel Cronin, for their failure to
9 attend the conference as ordered by the Court

10 For their defiance of Judge Wake’s order to act in “*good faith*”, their contemptuous behavior at
11 the conference, and their absurd report and perjurious affidavit, the Court should:

- 12 1) Impose severe monetary sanctions upon Brenden and Eckroad (personally),
- 13 2) Bar Eckroad from any further involvement in this case,
- 14 3) Refer the actions of Brenden to the State Bar of Arizona for review, and,
- 15 4) Refer the entire matter to the US Attorney General for criminal investigation and
16 prosecution.

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19 "[t]he duty of an attorney to a client ... is subordinate to his responsibility for
20 the due and proper administration of justice. In case of conflict, the former
21 must yield to the latter." *State v. Kruchten*, 101 Ariz. 186, 191, 417 P.2d 510,
22 515 (1966).

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RESPECTFULLY SUBMITTED this 30th day of MARCH 2005.

By _____

Scott M. McNair, Plaintiff Pro Per

ORIGINAL and COPY FILED with:

Clerk of the Court
United States District Court
District of Arizona
Sandra Day O'Connor U.S. Courthouse
401 W. Washington Street, Suite 130
Phoenix, AZ 85003-2118

COPY of the forgoing HAND-DELIVERED to:

Office of the Maricopa County Attorney
Attn: Dan Brenden
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
(Counsel for Defendants: Maricopa County, Medlin, Peterson, & Ramsey)

Scott M. McNair

Phoenix, AZ

March 15, 2005

Office of the Maricopa County Attorney
Attn: Dan Brenden
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004

VIA: Facsimile and email

Mr. Brenden,

Attached is a copy of the Plaintiff's Witness List (final).

As you are aware, today was the deadline for the final disclosure of documents and witnesses. This afternoon a CD-ROM with true images of the Plaintiff's Second Supplemental Disclosure was delivered to your office.

Prior to doing so, I ran out of computer paper. Since there was not enough time to procure more paper today and still deliver the CD-ROM to your office before it closed, I purchased more paper on the way home and the attached is for the Witness List(s).

Since we still need to complete a Joint Settlement Conference Report and file such by Monday, I will deliver a copy of both the Report and the Witness List in person then.

Sorry for any inconvenience,


Scott M. McNair