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Scott M. McNair  
[REDACTED]  
Phoenix, Arizona 85015

**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  
  
**MOTION TO COMPELL WITHDRAWAL OF  
COUNSEL DANIEL BRENDEN AND REQUEST  
FOR SANCTION**  
  
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.* <sup>1</sup>)

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

1 **II. MOTION**

2 For the reasons and authority contained herein, Plaintiff hereby moves this honorable Court to  
3 order Daniel Brenden to immediately and permanently remove himself as counsel for any and all  
4 parties in these proceedings, and, to impose appropriate sanctions upon him for his deliberate  
5 violation of his oath of office and Arizona State Bar Ethics Rules.

6 **III. MEMORANDUM AND POINTS OF AUTHORITY**

7 Prior to filing this action, Daniel Brenden (Brenden) wrote to Plaintiff informing him that he had  
8 been appointed by Defendant Maricopa County (County) as the “liaison” between Plaintiff and the  
9 County. In his letter(s) to Plaintiff, Brenden has stated that he would be in charge of and  
10 coordinating investigation of all issues raised by Plaintiff with and/or against the County.

11 Furthermore, Brenden has echoed these same assertions to the United States Equal Employment  
12 Opportunity Commission (EEOC) and directed the EEOC to use him as the main point of contact  
13 with the County and Defendants.

14 *Prior* to filing this action, and on numerous occasions during such, Plaintiff has repeatedly  
15 reminded Brenden that his role in this matter made him a crucial witness and that under Arizona  
16 State Bar Ethics Rule 3.7 he was barred from representing *anyone* in this matter.

17 Ethics Rule 3.7.(a) (LAWYER AS WITNESS) reads as follows:

18 A lawyer shall not act as advocate at a trial in which the lawyer is  
19 likely to be a necessary witness...

20 Additionally, ER 1.16(a) provides that:

21 ...unless a lawyer is directed by a tribunal to continue in a representation, a lawyer  
22 shall not either accept or continue in an engagement if: 1.) the representation will  
23 result in violation of the Rules of Professional Conduct or other law;

24 ...

1 Furthermore ER 1.16 states:

2 A lawyer should not accept representation in a matter unless it can be performed  
3 competently, promptly, without improper conflict of interest and to completion.

4 Ordinarily, a representation in a matter is completed when the agreed-upon  
5 assistance has been concluded. See ERs 1.2(c) and 6.5. See also ER 1.3.

6 It is well established that if a lawyer's acceptance or continuation in an engagement would  
7 constitute a conflict of interest on the lawyer's part, then the lawyer must decline the engagement or  
8 withdraw. See *Alexander v. Superior Court*, 141 Ariz. 157, 685 P.2d 1309 (1984); *Maricopa County*  
9 *Public Defender's Office v. Superior Court In and For County of Maricopa*, 187 Ariz. 162, 927 P.2d  
10 822 (App. 1996). This is, on analysis, merely a specific application of the general rule, stated in AZ-  
11 ER 1.16(a)(1) that a lawyer must decline employment, or withdraw from a representation, if "the  
12 representation will result in violation of the Rules of Professional Conduct . . ."

13 Since Brenden has asserted himself as "*investigator*" (and liaison) in this matter (both to  
14 Plaintiff and the EEOC), he is therefore required to be objective and unbiased. As an "*investigator*",  
15 anything Brenden learned while acting in that capacity is discoverable by Plaintiff.<sup>2</sup> Plaintiff  
16 therefore has the right to question Brendan about all information discovered by or relayed to him  
17 during his "*investigation*". Since he was directly involved in the investigation of Plaintiff's  
18 complaints, Brenden consequently is not only a "likely" witness, he is a crucial witness in this  
19 matter.

20 The only reason Brenden could have for naming himself as counsel for Defendants in this matter,  
21 would be to interfere with the (pro-se) Plaintiff's right to discovery and due process. Such is  
22 unethical and unlawful and this Court should not condone or allow such.

23 Furthermore, no real prejudice shall be imposed upon Defendants by Brenden's withdrawal

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<sup>2</sup> See generally, *Longs Drug Stores v. Howe* (1983) 134 Ariz. 424, 657 P.2d 412

1 because they have previously named Mary Cronin as co-counsel.

2 **IV. SUMMARY**

3 Before ever taking this case, Brenden was fully aware that he was barred from representing  
4 *anyone*, but willfully and deliberately chose to ignore the Rules of Professional Conduct. Having  
5 been warned by Plaintiff against doing so, Brenden purposely chose to defy those rules in order to  
6 inflict frustration (emotional suffering) directly on the (pro-se) Plaintiff. In order to protect its own  
7 honor, this Court is then compelled to order Brenden to withdraw.

8 **V. CONCLUSION**

9 By deliberately defying the Rules of Professional Conduct, Brenden premeditatedly endangered  
10 his clients and the Court should deal harshly with this brazen unethical act. In order to protect its  
11 own integrity, this Court must now:

- 12 1) Order Brenden to immediately remove himself as counsel for *any and all* parties in  
13 this matter,
- 14 2) Refer Brenden's blatant and premeditated violation of the Rules of Professional  
15 Conduct to the State Bar of Arizona for review and disciplinary action,
- 16 3) Impose its own sanction upon Brenden for his deliberate attempt to compromise this  
17 Court's integrity and honor.

18  
19  
20 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of APRIL 2005.

21  
22 By \_\_\_\_\_  
23 Scott M. McNair, Plaintiff Pro Per  
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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)