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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  
**MOTION TO COMPEL  
SEPARATION OF PARTIES**  
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); Pieking V. Penna. Rwy. Co. 151 F.2d 240; Puckett V. Cox, 456 F.2d 233.)

1 **II. MOTION**

2 For the reasons and authority contained herein, Plaintiff does hereby move this honorable Court  
3 to compel Defendant Maricopa County [County] to abandon its unlawful representation of  
4 Defendants Medlin, Peterson, and Ramsey.

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

6 A. STATUTE BARS THE STATE FROM REPRESENTING DEFENDANTS MEDLIN,  
7 PETERSON, AND RAMSEY.

8 Plaintiff has filed this action naming Medlin, Peterson, and Ramsey as *individual* defendants,  
9 asserting among other things that they willfully and deliberately violated statutes and County  
10 policies against sexual harassment and retaliation.

11 According to ARS 41-192.02,

12 The attorney general in his discretion is authorized to represent an officer or  
13 employee of this state against whom a civil action is brought in his individual  
14 capacity until such time as it is established as a matter of law that the **alleged**  
15 activity or events which form the basis of the complaint were not performed, or  
16 not directed to be performed, within the scope or course of the officer's or  
17 employee's duty or employment.

18 The Arizona Attorney General has interpreted the statute as prohibiting the State from providing  
19 legal representation for employees accused of violating the law. In a published opinion the AG has  
20 stated:

21 This section authorizes the attorney general's office to defend public officials sued in their  
22 individual capacities as long as a good faith judgment that the act was committed or performed in  
23 the scope of employment can be made. Op.Atty.Gen. No. R76-174, p. 93, 1976-77.

1 Since sexual harassment and retaliation for reporting or opposing such is unlawful as defined by  
2 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. (“Title VII”) and  
3 Title I of the Civil Rights Act of 1991, 42 U.S.C. 1981a, Defendants’ actions are clearly *outside the*  
4 *scope of their duty*.

5 Moreover, by Defendants’ own exhibits<sup>2</sup> the actions of Medlin, Peterson, and Ramsey are in  
6 direct violation of County policies and therefore are unmistakably *beyond the scope of their duty*.

7 Of great importance for the Court to recognize is that the statute specifically requires the State to  
8 immediately abandon their representation upon an allegation of unlawful activity. Plaintiff’s  
9 complaint clearly *alleges* that Medlin, Peterson, and Ramsey were acting in an *unlawful* capacity,  
10 and therefore statute requires the state to abandon *any* representation of them immediately.

11 **B. THE STATES REPRESENTATION OF RAMSEY IS A CONFLICT OF INTEREST**

12 Plaintiff has filed numerous complaints against Ramsey with the United States Federal Bureau of  
13 Investigation, Phoenix Police Department, and State of Arizona Attorney General for retaliatory  
14 *criminal acts* of identity theft and mail fraud.

15 The State of Arizona Attorney General forwarded these complaints to the Office of the Maricopa  
16 County Attorney by for *criminal* investigation and prosecution. Since the County it therefore duty  
17 bound to *criminally* investigate and prosecute Ramsey, it is therefore a clear conflict of interest for  
18 them to provide *any* legal representation to her in a civil action when while it is required to  
19 investigate and prosecute her for related criminal activity.

20 Furthermore, since the actions of the Ramsey constitutes criminal acts, the Plaintiff is therefore a  
21 victim and must be afforded the protections of Arizona’s Victims’ Rights act.<sup>3</sup> This act clearly  
22 prohibits the State from providing legal representation to those accused of criminal activity.

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<sup>2</sup> See generally Defendants’ Motion for Summary Judgment, Exhibit 1.

<sup>3</sup> See generally, ARS Title 13, Chapter 40

1 Especially in a civil matter against the accused by the victim.

2 This conflict of interest is compounded by the fact that Plaintiff alleges that Ramsey's *criminal*  
3 acts of identity theft and mail fraud began *after* he filed his complaints against her with the County  
4 and the United States Equal Employment Opportunity Commission.

5 C. THE COURT MUST ALLOW DEFENDANTS OPPORTUNITY TO RETAIN PRIVATE  
6 COUNSEL.

7 While all of this legally obligates the Court to order the County to immediately abandon its  
8 representation of Medlin, Peterson, and Ramsey, it also requires the Court to recognize their right to  
9 retain private counsel in this matter.

10 In consideration for such, the Plaintiff suggests that in order to prevent any prejudice or denial of  
11 due process towards these Defendants, that the Court should institute a ninety-day stay in  
12 proceedings so that they may retain counsel. This should be sufficient time to allow any new  
13 counsels to review the case and bring themselves up to speed in the matter.

14 **IV. SUMMARY**

15 The State is clearly and specifically barred by statute from acting as legal counsel to Defendants  
16 Medlin, Peterson, and Ramsey and the Court must order the County to comply with the law and  
17 cease this unlawful activity immediately. Failure to do so provides Defendants' with an unfair  
18 advantage over the Plaintiff, is prejudicial, and interferes with his constitutional and due process  
19 rights.

20 Furthermore, since the State's representation of these Defendants has been unlawful, any legal  
21 expenses or costs incurred during this period should be barred from recovery.

22 ...

23 ...

24 ...

1 **V. CONCLUSION**

2 The State (County) has deliberately acted in direct conflict and violation of the law and the Court  
3 is obligated to order them into compliance by issuing and order directing the County to:

- 4 1) Immediately and permanently cease all representation of Defendants Medlin, Peterson,  
5 and Ramsey;
- 6 2) Submit to the Court a detailed affidavit of all legal expenses and costs incurred in  
7 association with this action and the defense of those Defendants, for order barring recover  
8 of such.

9  
10 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of APRIL 2005.

11  
12 By \_\_\_\_\_  
13 Scott M. McNair, Plaintiff Pro Per

14 ORIGINAL and COPY FILED with:

15 Clerk of the Court  
16 United States District Court  
17 District of Arizona  
18 Sandra Day O'Connor U.S. Courthouse  
19 401 W. Washington Street, Suite 130  
20 Phoenix, AZ 85003-2118

21 COPY of the forgoing HAND-DELIVERED to:

22 Office of the Maricopa County Attorney  
23 Attn: Dan Brenden  
24 222 North Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
(Counsel for Defendants: Maricopa County, Medlin, Peterson, & Ramsey)