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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 MOTION TO EXTEND PAGE
LIMIT OF REPLY FOR PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

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. MEMORANDUM AND POINTS OF AUTHORITY**

2 Plaintiffs hereby respectfully requests this Honorable Court to grant this motion for leave to
3 exceed the page limit set forth in Local Rule for the District of Arizona 7.1C(2). The grounds for this
4 motion are as follows:

- 5 **1. Local Rule 7.2(e) authorizes this Court to grant leave to file a Memorandum of**
6 **Law in excess of the 11 page limit set forth in the Rule.**
- 7 **2. Plaintiff has filed a 21 page memorandum in support of his Motion for Partial**
8 **Summary Judgment.**
- 9 **3. Although Plaintiff attempted to streamline the memorandum as much as**
10 **possible, due to the complexities and the number of issues involved in this case,**
11 **the memorandum exceeds the page limit.**
- 12 **4. Statute bars the imposition of a local rule of form that would deprive a party of a**
13 **right to file a proper pleading.**
- 14 **5. No party will be prejudiced by a grant of this motion.**

15
16 **III. DISCUSSION**

17 Plaintiff is a pro se litigant who is without formal legal training and therefore the court must
18 recognize such and afford him leniency in reviewing his pleadings for form. A plea for such leniency
19 has been included in all his pleading before this court.

20 On September 22 2005, plaintiff filed a twenty-one page reply. Unbeknownst to plaintiff, a local
21 rule existed which limited his reply to eleven pages, unless leave to extend was granted by the court.
22 For the reasons outlined herein, plaintiff therefore seeks leave from this court to extend the length of
23 his reply brief to twenty-one pages.

24 ...

1 Plaintiff previously filed a terse Motion for Partial Summary Judgment in this case that was
2 followed by a Response from the defendants. Accordingly, Plaintiff is entitled to file a reply. In his
3 reply, plaintiff is required to fully articulate and address each of the issues raised. Such is stated as a
4 requirement in *Guarino*, “the designated portions of the record must be presented with enough
5 specificity that the district court can readily identify the facts upon which the party relies.” ’ *Guarino*,
6 980 F.2d at 405 (quoting *Inter- Royal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir.1989), cert.
7 denied, 494 U.S. 1091 (1990)). As the issues raised are ones in which require addressing complex
8 yet well defined legal tests, the court must therefore afford plaintiff his right to outline and address
9 each element of those tests.

10 Furthermore, the court should recognize that as the assertions in defendants’ response gave rise
11 to issues of their credibility (through perjurous and conflicting statements), plaintiff is therefore
12 entitled to the right to expose such and provide the court with the legal basis to review issues of
13 questionable credibility and how it applies the issues of this case. The need to extend the page limit
14 is therefore due in part to the actions of defendants themselves.

15 While the local rule imposes an (arbitrary) page limit on replies, this rule is one that addresses
16 “*form*”. The court is reminded that under FRCP 83(a)(2) a local rule imposing a requirement of *form*
17 shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to
18 comply with the requirement. As already stated by plaintiff, he was not aware of the local rule and
19 therefore his violation of this *rule of form*, is nonwillful. In *Carver v. Branch*, 946 F.2d 451 (6th Cir.
20 1991) the Sixth Circuit reversed the district court’s dismissal of an inmate’s § 1983 complaint for
21 failure to comply with the local rules of the Western District of Kentucky which required a response
22 brief to be filed within 15 days of service of a motion to dismiss. See also *Johnson v. Boyd-*
23 *Richardson*, 650 F.2d 147 (8th Cir. 1981).

24 The Court is required, at a minimum, to examine the movant's motion for summary judgment to

1 ensure he has discharged his initial burden. *Carver v. Branch* 946 F.2d 451, 454-55 (6th Cir. 1991).
2 In order for plaintiff to do so, the court must afford him opportunity to address each issue and the
3 controlling law for such. In this instance, it would be impossible for the movant (plaintiff) to
4 discharge his burden in such a limited number of pages.

5 When considering how the different courts would construct and impose local rules, the
6 Committee on Rules of Practice and Procedure of the Judicial Conference of the United States
7 proposed the following amendment of Rule 83, (dated August 15, 1991.)

8 "(d) Enforcement. Rules and orders pursuant to this rule shall be enforced in a
9 manner that protects all parties against forfeiture of substantial rights as a result of
10 negligent failures to comply with a requirement of form imposed by such a local
11 rule or order."

12 The Committee went on to express its concern and displeasure with enactment or enforcement of
13 a local rule that would impede a party's rights when it stated:

14 Although such directives continue to be authorized, they can lead to problems.
15 Counsel or litigants may be unaware of various directives. In addition, the sheer
16 volume of directives may impose an unreasonable barrier...Finally, counsel or
17 litigants may be unfairly sanctioned for failing to comply with a directive. For
18 these reasons, the amendment to this rule disapproves imposing any sanction or
19 other disadvantage on a person for noncompliance with such an internal directive.

20 Lastly, the Court should recognize that its own Clerk accepted the reply without any objection to
21 its length. Were the length of the reply such a crucial issue, the Clerk should not have accepted it.

22 ...

23 ...

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1 **IV. CONCLUSION**

2 By all the reasons contained herein, ample reasons exist for the Court to waive the page limit for
3 replies imposed by LRCiv 7.2.(3). The Court should therefore grant plaintiff's motion to extend the
4 page limit imposed by the local rule, lest the court deny plaintiff his due process right to proper
5 consideration of such.

6 RESPECTFULLY SUBMITTED this 3rd day of OCTOBER 2005.

7
8 By _____
9 Scott M. McNair, Plaintiff Pro Per

10
11 ORIGINAL and COPY FILED with:

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

18 COPY of the forgoing HAND-DELIVERED to:

19 Office of the Maricopa County Attorney
20 Attn: Dan Brenden
21 222 North Central Avenue, Suite 1100
22 Phoenix, Arizona 85004
23 (Counsel for Defendants: Maricopa County, Medlin, Peterson, & Ramsey)

24 COPY of the forgoing MAILED to

Jones, Skelton & Hochuli, P.L.C.
Attn: Eileen Dennis GilBride
2901 N. Central Avenue, Suite 800,
Phoenix, Arizona 85012,