

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

**RESPONSE TO MOTION TO STRIKE  
SUMMARY JUDGMENT REPLY**

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. Rwy. Co. 151 F.2d 240; Puckett V. Cox, 456 F.2d 233.)

## II. STATEMENT OF FACTS

On September 20 2005, plaintiff, a pro se litigant, filed a twenty-one page Reply to his Motion For Partial Summary Judgment. Unbeknownst to plaintiff, a local rule limits “replies” to no more than eleven pages, unless leave from the court is granted to the contrary.

On September 22 2005, defendants filed a motion to strike plaintiff’s reply because it exceeded the eleven page limit imposed by LRCiv 7.2(e), even though the Clerk of the Court accepted the reply which exceeded the local rule’s page limit.

On June 23 2004, Judge Wake issued a Case Management Order in this case. According to Item 8 of such, Judge wake specifically and unambiguously ordered, “All parties and their counsel shall meet in person and engage in good faith settlement talks no later than March 15, 2005.” In direct and deliberate defiance of this order, defendants failed to appear in person at the court ordered settlement conference. Though plaintiff sought sanctions against defendants for their failure to appear. The court took no action against defendants for their deliberate violation of its expressed directive.

Daniel Brenden, counsel for defendants, is listed as a *crucial* witness in this case and has refused to voluntarily remove himself, even though he is aware that such an appearance violates the rules of professional conduct. This court has taken no action against Brenden for his willful violation of said rules of professional conduct.

Throughout this case, plaintiff has continually advised the court that defendants have deliberately withheld disclosure and denied plaintiff discovery. This includes attempting to *criminally* extort money from plaintiff for public records which Arizona statute requires be provided to plaintiff for free (see ARS 39-122 and 38-413). The court has never taken any action against defendants for their violations of the rules of discovery and disclosure, nor has it taken any action against defendants for their *criminal* interference with his right to public records.

1 Throughout this case, plaintiff has continually raised to this court that defendants have submitted  
2 perjurous and self-conflicting testimony, and misrepresentations of the facts. This court has never  
3 taken any action against defendants for such.

4 In violation of the automatic stay imposed by 11 USC § 362, defendants filed numerous motions,  
5 pleadings, and notices with this court while that automatic stay was in effect. While the plaintiff (a  
6 pro se litigant) may be excused for not being aware of the existence of the automatic stay, defendants  
7 not only were aware of such, but willfully violated it in this and other courts of record. This court  
8 has never taken any action against defendants for willfully violating a statute they were cognizant of.

### 9 III. MEMORANDUM AND POINTS OF AUTHORITY

10 Plaintiff is a pro se litigant and therefore the court is obligated to afford him leniency for the  
11 *form* of his pleadings. Such notice of this is included in each of plaintiff's pleadings.

12 Plaintiff has pled to this court that he is entitled to summary judgment as a matter of law due to  
13 the actions of defendants. Defendants filed a response to such which included numerous  
14 misrepresentations of the facts, perjurous and self-contradicting statements, and little if any authority  
15 to defeat plaintiff's motion.

16 In his reply, plaintiff is required to fully articulate and address each of the issues raised. Such is  
17 stated as a requirement in *Guarino*, "the designated portions of the record must be presented with  
18 enough specificity that the district court can readily identify the facts upon which the party relies." '  
19 *Guarino*, 980 F.2d at 405 (quoting *Inter- Royal Corp. v. Sponseller*, 889 F.2d 108, 111 (6<sup>th</sup>  
20 Cir.1989), cert. denied, 494 U.S. 1091 (1990)). As the issues raised are ones in which require  
21 addressing complex yet well defined legal tests, the court must therefore afford plaintiff his right to  
22 outline and address each element of those tests.

23 The court should also consider that issue of credibility was created by the contents of defendants'  
24 response. As such, it must afford plaintiff sufficient space to address this matter.

1       Because plaintiff's reply finalizes the procedural steps of his motion for summary judgment,  
2 defendants are without opportunity to attack such. Since the reply clearly shows that plaintiff is  
3 entitled to judgment as a matter of law, defendants now seek to prevent the court from performing its  
4 duty by attempting to strike the reply for a technical violation of an obscure local *rule of form*. The  
5 court is reminded that under FRCP 83(a)(2) a local rule imposing a requirement of *form* shall not be  
6 enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with  
7 the requirement. As already stated by plaintiff, he was not aware of the local rule and therefore his  
8 violation of this *rule of form*, is nonwillful.

9       As such, before taking any action against plaintiff for his *nonwillfull* violation of this local rule,  
10 the court is compelled to "give notice" to plaintiff of the rule and offer him opportunity to rectify his  
11 mistake. It is not the court that has objected to the *form* of plaintiff's reply. It is the defendants that  
12 object to it because they realize that they have no legal means by which to defeat it. Such tactics to  
13 delay summary judgment rulings are sanctionable.

14       The court is also reminded that under LRCiv 7.2(e), a party may seek leave to extend the length  
15 of their reply before this court. Accordingly, plaintiff has this same day filed a motion seeking such  
16 an extension.

17       When reviewing defendants' motion to strike, the court is required to consider the motive,  
18 substance, and effect of such a motion. Defendants give no example of how they are harmed or  
19 prejudiced by the court allowing the extra pages.

20       If there was a violation of the local rule in this case, it was technical and completely harmless, so  
21 technical, so harmless, that the appropriate sanction would have been no sanction at all, and certainly  
22 not the extinction of a meritorious-seeming suit . See *Central States, Southeast & Southwest Areas*  
23 *Pension Fund v. Slotky*, 956 F.2d 1369, 1376 (7th Cir. 1992); cf. *Tuf Racing Products, Inc. v.*  
24 *American Suzuki Motor Corp.*, 223 F.3d 585, 590 (7th Cir. 2000).

1 In this instance, the court must consider the applicability of the local rule, and whether the rule  
2 itself is arbitrary or capricious. While in some instances an eleven-page limit for a reply may be  
3 sufficient, in other instances, when the subject matter involves issues with established legal tests  
4 consisting of numerous elements, such a limit would be considered arbitrary, capricious, and cause a  
5 denial of due process. The court must take into account that the rules of procedure should promote,  
6 not defeat the ends of justice, and that orderly rules of procedure do not require sacrifice of the rules  
7 of fundamental justice. *Hormel v. Helvering*, 312 U.S. 552, 557, 61 S.Ct. 719, 721, 85 L.Ed. 1037  
8 (1941),

9 Lastly, the court should consider how prejudicial it would be to strike plaintiff's reply for  
10 violating an obscure *local rule of from*, when it has allowed defendants to willfully and repeatedly  
11 violate more predominant statutes, rules of procedure, rules of professional conduct, and the court's  
12 own direct orders. For the court to allow defendants to ignore its expressed orders and to commit  
13 *criminal* acts against the plaintiff while in its court, then strike plaintiff's reply on such dubious  
14 grounds would clearly be reversible error.

#### 15 IV. SUMMARY

16 Plaintiff's *unwillful* violation of LRCiv 7.2(e) is not only forgivable, it pales and is insignificant  
17 in comparison to the deliberate, unlawful, and unethical acts of defendants. Defendants' motion to  
18 strike is a last ditch effort to abort a case it has little chance of surviving.

19 Rather than allow the court to dispense justice in a timely fashion as required by law, defendants  
20 seek to delay the inevitable.

#### 21 V. CONCLUSION

22 The Court should deny defendants' motion to strike plaintiff's reply.  
23  
24

1  
2 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of OCTOBER 2005.

3  
4 By \_\_\_\_\_

5 Scott M. McNair, Plaintiff Pro Se

6  
7  
8 ORIGINAL and COPY FILED with:

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

15 COPY of the forgoing HAND-DELIVERED to:

16 Office of the Maricopa County Attorney  
17 Attn: Dan Brenden  
18 222 North Central Avenue, Suite 1100  
19 Phoenix, Arizona 85004  
20 (Counsel for Defendants: Maricopa County, Medlin, Peterson, & Ramsey)

21 COPY of the forgoing MAILED to

22 Jones, Skelton & Hochuli, P.L.C.  
23 Attn: Eileen Dennis GilBride  
24 2901 N. Central Avenue, Suite 800,  
Phoenix, Arizona 85012,