

1 Scott M. McNair
2 (Plaintiff, Pro Se)
3 Phoenix, Arizona

COPY

JUN - 5 2003



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5 **IN THE SUPERIOR COURT OF ARIZONA**

6 I **MARICOPA COUNTY**

7
8 **SCOTT M. MCNAIR**
9 Plaintiff

Case No. 02-0003--000539-001

v.

10 **MARICOPA COUNTY DEPARTMENT OF**
11 **TRANSPORTATION,**
12 **STATE OF ARIZONA PERSONNEL**
13 **BOARD,**
14 **KENNETH MEDLIN,**
TERRY PETERSON,
JENNIPHER RAMSEY
Defendants

17 **I. CAUSE OF ACTION**

18 Pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6, the Plaintiff does hereby bring before the
19 Superior Court of Arizona, in the County of Maricopa, this action for *a Judicial Review of an Administrative*
20 *omission*, of the decision of the State of Arizona Personnel Board issued on the 29th day of April 2003, in the case of
21 McNair v. Maricopa County Department of Transportation, ET Al., Docket Number 02-56.

22
23 **II. PLEA FOR LENIENCY FOR FORM AND CONTENT OF PLEADINGS**

24 In that the Plaintiff is neither an attorney nor represented by legal counsel, the Plaintiff does hereby plea to the
25 Court for leniency for the form and contents of his pleadings. Upon the discovery of defect, error, or omission in such,
26 Plaintiff requests that the Court grant him opportunity to amend his pleadings to correct such.

1 **III. DEMAND FOR TRIAL DE NOVO**

2 Pursuant to A.R.S.¹ 12-910.C, the Plaintiff does hereby demand a *“Trial De Novo”*.

3 **IV. DEMAND FOR TRIAL BY JURY**

4 Pursuant to A.R.S. 12-910.C, the Plaintiff does hereby demand a *“Trial By Jury.”*

5 **V. RECORD OF PROCEEDINGS**

6 The Plaintiff does hereby demand that a true and accurate record of all proceedings in this matter be kept.

7 Pursuant to A.R.S 12-909.A, the Plaintiff requests the record include and be supplemented with all transcripts,
8 pleadings, evidence, and other documents from the prior Administrative Action before the State of Arizona Personnel
9 Board.

10 **VI. RIGHT TO AMMEND**

11 The Plaintiff reserves the right to amend this complaint and subsequent cause of action, to add counts for relief
12 relevant to the nature of this action.

13 **VII. STATEMENT OF CASE**

14 The Plaintiff (McNair) is a former *“Contract Employee”* for the Maricopa County Department of Transportation.
15 As a *“Contract Employee”*, McNair was exempted from the *“Maricopa County Employee Merit System”*. During his
16 employ he witnessed, was forced to be involved in, and subjected to, numerous unlawful and prohibited acts by
17 personnel in direct service of Maricopa County.

18 At some point in his employ, he attempted to file complaints with the management of his department against
19 regular County employees for their involvement in, and subjecting him to, prohibited acts. McNair was denied the
20 opportunity to file said complaints, was threatened with reprisals should he attempt to pursue such, and has alleged
21 that he was subjected to prohibited retaliatory actions for his attempts to report any acts, including but not limited the
22 termination of his employment on June 30 2002, and denial of consideration for other employment opportunities
23 available at that time and afterwards.

¹ A.R.S shall refer to Arizona Revised Statutes

1 On July 17 2002, McNair filed a number of complaints and notices with public bodies and officials of Maricopa
2 County, seeking review, relief, and the civil and criminal prosecution of those involved.

3 Subsequent to this, McNair alleged that he was further denied employment and subjected to even more prohibited
4 acts of retaliation.

5 The County continually asserted that because McNair had previously been a “*Contract Employee*”, that he was
6 not entitled to any rights or protections by Maricopa County or the State of Arizona for previous or future retaliatory
7 acts, and refused to accept, review, pursue, or act upon his complaints and notices. McNair has alleged that Maricopa
8 County has continually subjected him to acts prohibited under A.R.S. 38-532 and other regulations, including but not
9 limited to ongoing denial of employment opportunities, and other more criminal acts of retaliation.

10 For several months, McNair attempted to pursue complaints and assert rights with Maricopa County. The County
11 repeatedly refused to accept his complaints and continually asserted that McNair had no rights, neither on the County
12 nor State level.

13 Due to his own diligent research efforts, McNair discovered that in opposition to the County’s wrongful assertion
14 that he had no rights on any level, that the conditions of his previous employment with the County, in fact made him a
15 person in “*State Service*”, and therefore was entitled to rights and protections, subject to the laws and policies that
16 govern all employees of the State of Arizona. McNair contacted the State of Arizona Personnel Board requesting the
17 opportunity to file complaints, seeking administrative review and relief.

18 The Executive Director of the State of Arizona Personnel Board responded to McNair notifying him that he would
19 only be allowed to file a “*Whistleblower Complaint*” under A.R.S. 38-532. On December 30 2002, McNair filed
20 such.

21 Following this, the State of Arizona Personnel Board notified all parties, including Ms. Mary Cronin as counsel
22 for Maricopa County, and individual respondents Medlin, Peterson, and Ramsey, that a hearing would be held January
23 29th 2003, concerning the “*Whistleblower Complaint*” only.

24 Prior to January 29 2003, McNair filed a witness list and numerous requests for the issuance of subpoenas.
25 Included were requests for subpoenas for numerous documents and personnel from the County, including Mr. Daniel
26 Brenden, Deputy County Attorney, as a witness.

1 Succeeding this, and in direct conflict with State Bar of Arizona Ethics Rules on conflict of interest, Mr. Brenden
2 filed a Notice Of Appearance on behalf of the County.

3 Prior to the scheduled January 29 2003 hearing, Hearing Officer Harold Merkow denied all subpoena requests
4 submitted by McNair.

5 The County then filed a Motion to Dismiss, raising the argument that since the County had employed McNair, the
6 State of Arizona Personnel Board had no jurisdiction.

7 An Evidentiary/Jurisdictional Hearing was then set for February 10 2003 before Hearing Officer Harold J.
8 Merkow.

9 Prior to this evidentiary/jurisdictional hearing, McNair filed motions for the subpoena of County personnel and
10 documents, and to compel Mr. Brenden to remove himself as counsel for the County, as he was listed as a witness and
11 thereby precluded by State Bar of Arizona Ethics Rules on Conflict of Interest.

12 Hearing officer Harold J. Merkow completely ignored the Complaint's motions, failing to rule at all.

13 On February 10 2003, Hearing Officer Harold J. Merkow held an evidentiary/jurisdictional hearing in response to
14 the County's Motion to Dismiss. Throughout the hearing, Hearing Officer Merkow allowed Mr. Brenden to represent
15 the County, submit evidence, and call & question witnesses on behalf of the County.

16 During the hearing, McNair again requested the Hearing Officer command the presence of County personnel to
17 act as witnesses on his behalf. The Hearing Officer (Merkow) categorically refused.

18 After allowing the County to present its case, the Hearing Officer stopped the proceedings (declaring he, "*had*
19 *heard enough*").

20 While refusing McNair any opportunity to present any evidence or witnesses, Merkow then ruled that since the
21 County had failed to establish an independent board to hear the complaints of "*contract employees*", that the State of
22 Arizona Personnel Board **did** have jurisdiction in this matter.

23
24 Following this, in a clearly prejudicial and predetermined manner, Hearing Officer Merkow, then instructed the
25 County on what motion to file, where upon he would rule to dismiss McNair's case, giving a strictly limited amount
26 of time for each party to file their pleadings.

1 The County subsequently filed a Motion to Dismiss, claiming (as instructed by Hearing Officer Merkow), that
2 McNair had failed to file a complaint within the jurisdictional time limit imposed by A.R.S. 38-532.

3 McNair then filed a motion with Hearing Officer Merkow requesting an extension of time in order to have the
4 proceedings of the February 10 2003 hearing transcribed and included in his reply.

5 Since Merkow withheld any ruling, either for or against McNair's motion for time to have a transcript prepared
6 and included, on February 24 2003, McNair was forced to file his reply unperfected.

7 Among items asserted in McNair's reply were:

- 8 • Numerous technical and procedural errors in the proceedings
- 9 • Numerous legal flaws in the arguments and assertions posed by the County
- 10 • The County's constant refusal to accept a complaint from McNair (thereby making a question of tolling
11 moot)
- 12 • The County's deliberate actions to **prevent** McNair from **ever** filing a complaint,
- 13 • The direct and deliberate interference of the County and Hearing Officer Merkow in McNair's attempts to
14 gain access to evidence and testimony that could have been used to establish a date for the tolling of a
15 complaint, or anything that could have been generally used in his defense,
- 16 • The bias and predetermination against McNair by Hearing Officer Merkow in his instructions to the County
17 on the filing and outcome of the Motion,
- 18 • Numerous arguments and demands that "*Equitable Tolling*" be applied to McNair's complaint

19
20 On March 28 2003, Hearing Officer Merkow filed his ruling upon the County's Second Motion to Dismiss, ruling
21 on behalf of the County, and recommending to the State of Arizona Personnel Board that the complaint filed by
22 McNair be dismissed.

23 Subsequent to such, and as permitted by law, on April 15 2003 McNair filed an "*Objection to the Hearing*
24 *Officer's Recommendation to the Board*" with the State of Arizona Personnel Board. Included in such, he asserted
25 that through deliberate actions of the County, the Board personnel, and Hearing Officer Merkow, McNair had been
26 "denied any access to equitable justice or due process."

1 On April 30 2003, the State of Arizona Personnel Board met to review the recommendation of Hearing Officer
2 Merkow upon the “*Whistleblower Complaint*” filed by Plaintiff. During the public meeting, when issues before the
3 Board are to be decided concerning personnel matters, the complainant and respondents are to be allowed the
4 opportunity to address the Board concerning their case. The Board deliberately sought to circumvent McNair’s right
5 to speak, and only after arguing for the opportunity to do so, was McNair allowed. The Board ignored all points of
6 unlawful and unethical behavior by the County, Board personnel, and Hearing Officer Merkow, and summarily
7 accepted Merkow’s recommendation without question or discussion.

8 **VIII. HEARING OFFICER’S FINDINGS, DECISION, & REASONS SUBJECT TO REVIEW**

9 The items contained in the “*HEARING OFFICER’S REPORT AND RECOMMENDATION FOR DISMISSAL OF*
10 *COMPLAINT*” (H.O. Harold J. Merkow), subject to review by the Court shall include, but not be limited to the
11 following:

- 12 1) HOR², pg. 5, FINDING OF FACT, item 9, “Maricopa County failed to provide copies of its Motion to
13 Dismiss to named respondents”
- 14 2) HOR, pg. 5, FINDING OF FACT, item 9, “*He (Complainant) was unable to present any evidence at the*
15 *February 10 jurisdictional hearing, that the County has been undertaking an ‘ongoing campaign’ of denial of*
16 *discovery, disclosure and access to public records and that “McNair cannot present documents, evidence, or*
17 *testimony if not given the opportunity to do so. Furthermore, McNair cannot present documents that the*
18 *County refuses him access to or secrets from him in order to inhibit his right to due process and justice.”*
- 19 3) HOR, pg. 5, FINDING OF FACT, item 9, “*... that he is entitled to equitable tolling... ”*
- 20 4) HOR, pg. 5, FINDING OF FACT, item 9, “*... that his supervisor threatened him and that these threats of*
21 *imminent reprisal were intended to prevent the Complainant from contacting any Public Body or Director”*
- 22 5) HOR, pg. 6, FINDING OF FACT, item 11, “*No documentary evidence exists in the record of this matter to*
23 *show that prior to December 2002, Complainant made a written request before an administrative body to*

² HOR refers to the *Hearing Officer’s Report and Recommendation for Dismissal of Complaint*.

1 *review whether his separation from service with Maricopa County was a result of a prohibited personnel*
2 *action ”*

3 6) HOR, pg. 6, FINDING OF FACT, item 11, *“No evidence exists in the record of this matter to show that,*
4 *prior to November 2002, Complainant knew that the Maricopa County Merit System Commission would not*
5 *entertain a request for hearing from Complainant. ”*

6 7) HOR, pg. 7, CONCLUSIONS OF LAW, item 2, *“Complainant was not in ‘state service’ as an employee of*
7 *Maricopa County. ”*

8 8) HOR, pg. 9, CONCLUSIONS OF LAW, item 3, *“Complainant has failed to show that he meets the*
9 *jurisdictional requirements of the Whistleblower statute since Complainant has failed to produce any written*
10 *complaint that he submitted to a public body prior to the expiration of his contract... ”*

11 9) HOR, pg. 9, CONCLUSIONS OF LAW, item 4, *“Complainant has failed to show that he meets the*
12 *jurisdictional requirements of the Whistleblower statute since Complainant has failed to produce any written*
13 *request for a hearing to any administrative body within 10 days from his separation... ”*

14 10) HOR, pg. 9, CONCLUSIONS OF LAW, item 5, *“Complainant is not entitled to a hearing before the Arizona*
15 *State Personnel Board... ”*

16 11) HOR, pg. 10, REASONS FOR RECOMMENDATION, *“Complainant’s argument is spurious since he never*
17 *tried to submit a request for a hearing and he did not know that a request for hearing would be rebuffed.”*

18 12) HOR, pg. 10, REASONS FOR RECOMMENDATION, *“The undersigned believes that, since the Arizona*
19 *Revised Statutes are available to all government employees at any time, Complainant should have made*
20 *himself aware of the law and its applicability to him.”*

21 13) HOR, pg. 10, REASONS FOR RECOMMENDATION, *“... the written disclosure on which a complaint is*
22 *based must have been submitted to a public body while the person was a government employee.”*

23 14) HOR, pg. 11, REASONS FOR RECOMMENDATION, *“When Complainant published his e-mail... he was*
24 *no longer an employee... and his re-employment rights were no longer an issue.”*

- 1 15) HOR, pg. 11, REASONS FOR RECOMMENDATION, *“The only way Complainant’s re-employment rights*
2 *could be pertinent is if...while employed... he was told that he would not be re-employed because of a*
3 *disclosure made to a public body. ”*
- 4 16) HOR, pg. 11, REASONS FOR RECOMMENDATION, *“Since Complainant has not produced any*
5 *documentation... it is wholly irrelevant whether Maricopa County did not provide any discovery materials to*
6 *Complainant. ”*
- 7 17) HOR, pg. 11, REASONS FOR RECOMMENDATION, *“All in all, Complainant has no basis for pursuing a*
8 *Whistleblower complaint. ”*
- 9 18) HOR, pg. 11-12, REASONS FOR RECOMMENDATION, *“... his actions during the months of June and July*
10 *do not support any conclusion that he was a whistleblower or that he suffered any prohibited personnel*
11 *action.”*
- 12 19) HOR, pg. 12, REASONS FOR RECOMMENDATIONS, *“Complainant’s complaint is untimely and does not*
13 *fall within the ambit of the Whistleblower statutes.”*

14

15 **IX. GROUNDS UPON RELIEF SOUGHT**

16 The Plaintiff seeks relief upon the grounds including but not limited to:

- 17 1) Plaintiff was denied any semblance of due processes or equitable justice,
- 18 2) Plaintiff was denied due process and equitable just by numerous technical and legal flaws in the proceedings
19 and circumstances surrounding such,
- 20 3) Plaintiff was denied due process by the County’s continual unethical and unlawful interference,
- 21 4) Plaintiff was denied due process by Hearing Officer Merkow allowing the unethical and unlawful interference
22 of the County, including but not limited to the County’s deliberate and categorical refusal to all discovery and
23 disclosure requests,
- 24 5) Plaintiff was denied due process by Hearing Officer Merkow’s personal and deliberate interference with the
25 Plaintiff’s attempts to obtain evidence, and to present evidence and witnesses on his behalf,

- 1 6) Plaintiff was denied due process and equitable justice by Hearing Officer Merkow deliberately engineering
2 the proceedings and circumstances of such in a manner designed to prevent Plaintiff from having ample
3 opportunity to present evidence, witnesses, or any semblance of a case,
- 4 7) Plaintiff was denied due process by the State of Arizona Personnel Board's refusal to acknowledge or inhibit
5 the County's unethical and unlawful actions, and the complete interference with due process and equitable
6 justice by Hearing Officer Merkow,
- 7 8) Hearing Officer Merkow's decision is not supported by substantial evidence, is contrary to law, is arbitrary
8 and capricious, and is an abuse of discretion,
- 9 9) The State of Arizona Personnel Board's decision is not supported by substantial evidence, is contrary to law,
10 is arbitrary and capricious, and is an abuse of discretion.
- 11 10) Plaintiff was denied due process in that Hearing Officer Merkow's financial and employment relationship
12 with the County (which he did not disclose) created a conflict of interest, caused bias in the County's favor,
13 and allowed the County to proceed unethically and unlawfully,
- 14 11) Plaintiff was denied due process and equitable justice by the County unlawfully providing free legal
15 representation to the individual respondents (Medlin, Peterson, & Ramsey), giving them an unfair and
16 unlawful advantage over the Plaintiff,
- 17 12) Plaintiff is entitled to "*equitable tolling*" of his complaint(s),
- 18 13) The exact date(s) by which tolling of the complaint, and by which the Plaintiff was denied employment has
19 never been specifically identified through credible evidence,
- 20 14) In that the County has continually refused to acknowledge, accept, review, or act upon any complaint by the
21 Plaintiff, no tolling may be considered or applied to any complaint filed or not filed with the County,
- 22 15) Plaintiff was a person in "*state service*", and therefore entitled to the protections afforded all such persons,
- 23 16) The Court must consider the threats and acts used by the County to prevent the Plaintiff from filing a
24 complaint, timely or otherwise, and apply equitable justice and equitable tolling accordingly,
- 25 17) The Court must consider all prohibited acts the Plaintiff was subjected to, beginning from the time he
26 originally attempted to file a complaint and was prohibited by his supervisor/director from doing so,

- 1 18) That the jurisdiction of a “*Whistleblower complaint*” is not limited to only the time that a person is currently
2 employed in state service,
- 3 19) The jurisdiction of a “*Whistleblower complaint*” covers not only those currently in state service, but also any
4 person seeking employment in state service,
- 5 20) Plaintiff should have been allowed the opportunity to file and seek review of complaints with either Maricopa
6 County or the State of Arizona Personnel Board (or both) for offenses against him beyond those specifically
7 limited to a “*Whistleblower Complaint*” (A.R.S. 38-532)
- 8 21) Plaintiff was not aware of his rights, was deliberately and wrongfully lied to about his rights, any true
9 knowledge of any possible rights for relief he may have had was withheld from him, and therefore may not be
10 penalized for not exercising such in a timely or perfected manner.

11 **X. RELIEF SOUGHT**

12 Since it is obvious that neither the County nor the State of Arizona Personnel Board will afford the Plaintiff an
13 impartial review, nor allow the Plaintiff the opportunity to file all complaints relevant to the adverse employment acts
14 against him, the Plaintiff seeks the following relief:

- 15 1) A “*trial de novo*” in the Superior Court of Arizona, Maricopa County
- 16 2) A “*trial by jury*”
- 17 3) A trial of all complaints previously filed with the State of Arizona Personnel Board,
- 18 4) Upon a full disclosure of all rules, policies, and procedures governing the employment of those in
19 “*state service*”, and all evidence in accordance with the rules of discovery and disclosure, the
20 opportunity to amend the complaint to include other relevant prohibited acts committed against him,
- 21 5) Upon a full disclosure of all rules, policies, and procedures governing the employment of persons by
22 Maricopa County, and all evidence in accordance with the rules of discovery and disclosure, the
23 opportunity to amend the complaint to include other relevant prohibited acts committed against him,
- 24 6) All costs and fees incurred by the Plaintiff in the course of this action
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Sworn and submitted this the 5th day of JUNE 2003:

By: _____

Scott M. McNair (Pro Se)

FILED this day in:

The Superior Court of Arizona, Maricopa County

201 West Jefferson Street

Phoenix, Arizona