

COPY

JUL 23 2003



MICHAEL K. JEANES, CLERK
S. HOPKINS
DEPUTY CLERK

1 Scott M. McNair
2 (Plaintiff, Pro Per)

3 Phoenix, Arizona
4

5 ~~IN~~ SUPERIOR COURT OF THE STATE OF
6 IN AND FOR THE COUNTY OF MARICOPA

7 SCOTT M. MCNAIR
8 Plaintiff

CASE No. LC2003-000539-001.

9 V.

MOTION TO COMPEL COMPLIANCE
10 WITH TRANSFER OF RECORD
11 REQUIREMENTS

12 MARICOPA COUNTY DEPARTMENT
13 OF TRANSPORTAION, ET AL,
14 Defendants

15 L PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS .

16 In that the Plaintiff (McNair) is neither represented by counsel nor had any formal legal training, he doe;
17 hereby request leniency from the Court for the form and content of *this* pleading.

18 In accordance with J.R.A..D.' Rule 13, the Plaintiff does hereby request that the Court waive and/or
19 modify any formal procedural requirements in order to insure McNair due process and equitable justice, and
20 to insure that a fair and just determination can be made

21 II. SCOPE OF MOTION

22 The Plaintiff (McNair) does hereby move the Court to compel the State of Arizona Personnel Board
23 (Board) to fully comply with the requirements of A.R.S. §12-904 and J.R.A.D. Rule 5, by transmitting *the*
24 complete record to the Court and by providing a proper "*Certification of Record on Review*" to the Court
25 and all parties, as required by law.

III. MEMORANDUM AND POINTS OF AUTHORITY

26 McNair has file before this Court an action *for Judicial Review of Administrative Decision* based upon
27 an appeal to the Board (No. 02-56).

JRAD refers to the *Arizona Rules of Procedure for Judicial Review of Administrative Decisions*.

1 Pursuant to A.R.S. §12-904.B, on June 9 2003 McNair filed a Notice of such with the Board (Exhibit
2 A). Also pursuant to A.R.S. §12-904.B (5) McNair included a demand that a previously prepared transcript
3 of the administrative proceedings be included and transmitted to the Court.

4 On July 2 2003, the Board sent to McNair a copy of a vague and untitled “document” filed with the
5 Court (Exhibit B).

6 While this document may be intended to represent the required “*Certification of Record on Review*”, it
7 fails to fulfill the requirements set forth by statute in both form and content, and should be rejected by the
8 Court.

9 The requirements for the “*Certification of Record on Review*” are clearly stated in J.R.A.D Rule 5 and
10 in A.R.S. §12-904.B.5. For the Court’s review, relevant parts of both are listed as follows:

11 J.R.A.D Rule 5 reads in part:

12 **RULE 5. RECORD ON REVIEW**

13 (a) Composition of Record on Review and Transmission of Record on
14 Review.

15 In filing the record on review pursuant to A.R.S. § 12-909(B), the
16 administrative agency shall file with the record a document **entitled**
17 “*Certification of Record on Review*” ...This certification **shall include an**
18 **index of all materials contained in the record on review** and shall
19 include certification that the materials included in the record on review
20 are originals or accurate copies.

21 A.R.S. §12-904.B.5 read in part:

22 12-904. Commencement of action; transmission of record

23 B. ...the office of administrative hearings or the agency that conducted the hearing
24 shall transmit the record to the superior court. The record shall consist of the
25 following:

- 26 1. The original agency action from which review is sought.
- 27 2. Any motions, memoranda or other documents submitted by the parties to the
28 appeal.
- 29 3. Any exhibits admitted as evidence at the administrative hearing.
- 30 4. The decision by the administrative law judge and any revisions or
modifications to the decision.
5. **A copy of the transcript of the administrative hearing, if the party seeking
judicial review desires a transcript to be included in the record and provides
for preparation of the transcript at the party's own expense...**

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IV. FORM

While McNair is neither an attorney nor had any formal legal training, he has gone to great lengths to research and comply with all requirements in the composition and form of pleadings. Including those requirements concerning: caption, title, page size, borders, type face/size, number, etc, as set forth in A.R.C.P.² Rules 10 & 11.

The Board is an agency of the state whose purpose is to hold legal proceedings and to issue rulings and decisions upon such. Since these rulings and decisions are matters of law, subject to rules of procedure and appeal to higher courts for review and publication, the Court should therefore expect the Board to prepare and submit pleadings and documents that meet the Court’s basic criteria of form.

The Court should also note that the Board is represented in this matter by legal counsel that is expected to be knowledgeable in the requirements of form for pleadings to be submitted to the Court.

The “*document*” submitted to the Court failed to hold any resemblance to a formal pleading or document, and appears to be nothing more than a quick-handed “*office memo*”.

In direct opposition to the requirements set forth in J.R.A.D. Rule 5, this “*document*” fails to be **entitled** “*Certification of Record on Review.*”

If fact, the document bears no title at all, nor can the words “*Certification of Record on Review*” be found anywhere within its content.

V. CONTENT

The composition of the content of the “*Certification of Record on Review*” is plainly and explicitly set forth in J.R.A.D. Rule 5.

RULE 5. RECORD ON REVIEW

(a) Composition of Record on Review and Transmission of Record on Review.

In filing the record on review pursuant to A.R.S. § 12-909(B), the administrative agency shall file with the record a document entitled “*Certification of Record on Review*”...This certification shall include an **index of all materials contained in the record on review** and shall include certification that the materials included in the record on review are originals or accurate copies.

² A.R.C.P refers to the *Arizona Rules Of Civil Procedure.*

1 The Rule requires that an “*index of all materials*” be included. Rather than submit the required detailed
2 “*index of all materials*”, the Board has chosen to list “*groups*” of possible documents.

3 The Rule requires the board to compile and submit a detailed “*index of all materials*” in its record. The
4 purpose of this is clearly so that the Court and all parties are aware of what specific pleadings, evidence,
5 transcripts, and other materials are available.

6 Obviously this was intended to ensure that the Court received a complete copy of the record, and to
7 ensure that all parties could submit pleadings and argument based upon such. And allow any party to alert
8 the Court if documents are missing (as is the case here.)

9 Plainly a list of what “*document groups*” are available does not meet this requirement

11 VI. TRANSCRIPT OF PROCEEDINGS

12 Many of the issues raised by McNair in this case are based upon an Evidentiary Hearing held by the
13 Board on February 10 2003. McNair has asserted that the Board and its hearing officer conducted the
14 hearing in a manner that was deliberately prejudicial to him.

15 Following such, the circumstances surrounding McNair’s attempts to obtain the hearing tapes from the
16 Board and be allowed time to have them transcribed and included in pleadings, has been a recurring issue in
17 this case.

18 In McNair’s original Complaint before this Court, also included a demand that the transcript of those
19 proceedings be included and transmitted to this Court. McNair’s Complaint stated as follows:

20 V. RECORD OF PROCEEDINGS

21 The Plaintiff does hereby demand that a true and accurate record of all proceedings in
22 this matter be kept. Pursuant to A.R.S 12-909.A, the Plaintiff requests the record include
23 and be supplemented with all transcripts, pleadings, evidence, and other documents from
the prior Administrative Action before the State of Arizona Personnel Board.

24 McNair’s right to assert such a demand is supported by statute. A.R.S. §12-904.B.5 reads in part:

25 12-904. Commencement of action; transmission of record
26 B. ...the office of administrative hearings or the agency that conducted the hearing shall transmit the
record to the superior court. The record shall consist of the following:
27 5. A copy of the transcript of the administrative hearing, if the party seeking judicial review
28 desires a transcript to be included in the record and provides for preparation of the transcript
29 at the party's own expense...

1 The Court will note, that any mention of the transcript is clearly missing for the list of materials
2 submitted by the Board.

3 The Court should also recognize that the Board lists only the “*Personnel Board Minutes dated April 29,*
4 *2003*” and clearly fails to include or recognize the tapes of that meeting. The meeting whereupon McNair
5 had to argue to with the Board in order to be given the opportunity to address the Board when it would be
6 giving final review to this matter.

7 The Court should question the motives of the Board for this deliberate omission of both critical materials
8 (evidence) in this matter.

9
10
11 **VII. CONCLUSION**

12 The State of Arizona Personnel Board is required by statute to transmit an accurate and complete
13 Record of Proceedings to the Court, and to provide a detailed index of such to all parties. The requirements
14 for the form and content of the “*Certification of Record on Review*” are specified by statute in a precise and
15 unambiguous manner.

16 Since the Board has obviously and deliberately ignored the requirements set forth in law, the Court is
17 therefore given no choice other than to order the Board to comply with the law by performing the following:

- 18 1) Transmitting the **COMPLETE** record of proceedings to the Court, including:
19 a) The transcript of the Evidentiary Hearing of February 10 2003
20 b) The Tapes of the Personnel Board Meeting held April 29, 2003
21 2) Preparing a proper “*Certification of Record on Review*”, including:
22 a) A properly formatted, **titled**, and duly signed “*Certification of Record on Review*”
23 b) A detailed index of all materials contained in the record
24 c) Mailing copies of such to all parties
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1 RESPECTFULLY SUBMITTED this 23rd day of JULY 2003.

2
3 By _____

4 Scott M. McNair
5 Plaintiff (Pro Per)

6
7
8 ORIGINAL and copy of the foregoing FILED this 23rd day of JULY 2003 with:

9 Clerk of the Court
10 Superior Court of Arizona, Maricopa County
11 201 West Jefferson Street
12 Phoenix, Arizona

13 COPIES of the foregoing mailed this 23rd day of JULY 2003 to Defendants:

14 Sunberg & Mousel
15 Attn: Craig Mousel
16 934 West McDowell Road
17 Phoenix, Arizona 85007
18 (Counsel for Defendant,
19 The State of Arizona Personnel Board)
20 Office of the Maricopa County Attorney
21 Attn: Dan Brenden
22 222 North Central Avenue, Suite 1100
23 Phoenix, Arizona 85004
24 (Counsel for Defendants: Maricopa County &
25 Maricopa County Department of Transportation)

Maricopa County Department of Transportation
Attn: Kenneth Medlin
2901 W. Durango
Phoenix, Arizona 85009

Maricopa County Department of Transportation
Attn: Terry Peterson
2901 W. Durango
Phoenix, Arizona 85009

Maricopa County Department of Transportation
Attn: Jennipher Ramsey
2901 W. Durango
Phoenix, Arizona 85009

26
27 By _____

28 Scott M. McNair
29 Plaintiff (Pro Per)

EXHIBIT A

Scott M. McNair

[REDACTED]
Phoenix, Arizona 85016

June 9, 2003

State of Arizona Personnel Board
1400 West Washington, Suite 280
Phoenix, AZ 85007

To Whom It May Concern:

This is to inform you that in accordance with A.R.S. 12-909, on June 5 2002, a civil action was filed against you in the Superior Court of Arizona, Maricopa County.

Pursuant to A.R.S. 12-904.B, the record the case heard by your agency (No. 02-56, McNair v. Maricopa County Department of Transportation) must be transmitted to the Superior Court for inclusion in its record of case LC2003-000539-001

The record shall consist of the following:

1. The original agency action from which review is sought
2. Any motions, memoranda or other documents submitted by the parties to the appeal.
3. Any exhibits admitted as evidence at the administrative hearing.
4. The decision by the administrative law judge and any revisions or modifications to the decision.
5. A copy of the transcript of the administrative hearing.

Any other items relevant to the case should also be transmitted to such.

Sincerely,

[REDACTED]
Scott M. McNair

EXHIBIT B

(NOTE: Original was a single page, 2-sided document and is now provided as a two-page, single-sided copy of such)



STATE OF ARIZONA

JANET A. NAPOLITANO, Governor
JUDITH L. HENKEL, Executive Director

PERSONNEL BOARD

1400 West Washington, Suite 280 Phoenix, Arizona 85007-2939 Phone: (602) 542-3888 Fax: (602) 542-3588

BOARD MEMBERS

STEVE SEPNIESKI CHAIR
THOMPSON, VICE CHAIR
BECKY JORDAN
GWENDOLYN J. HATCH R
WANDA F. MOORE

July 2, 2003

Craig Mousel
State Bar No. 3354

Mr. Michael Jeanes, Clerk
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

COPY

JUL - 2 2003



MICHAEL K. JEANES, CLERK
C. CARDENAS
DEPUTY CLERK

RE SCOTT M. MCNAIR

CASE #LC 2003-000539-001

vs.

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, et al.

Dear Mr. Jeanes:

In accordance with A.R.S. 41-785.F, we are hereby transmitting the following to you for the above mentioned case:

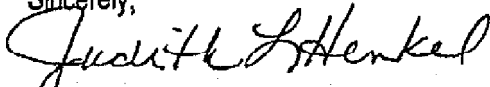
- Original Chronological Case File
- Tapes of Proceedings dated February 10, 2003
- Respondent's and Appellant's Exhibits
- Personnel Board Minutes dated April 29, 2003

I hereby certify that the enclosed documents are a true and accurate record in the above mentioned case.

SIDE A

The documents listed above are available to be checked out by the parties from the Superior Court in which the originals are filed. Copies are also maintained at the Arizona State Personnel Board at 1400 West Washington, Suite 280, Phoenix, Arizona 85007.

Sincerely,



Judith L Henkel
Executive Director

Enclosures ...

Bott M. McVair

2025 East Campbell Avenue, #239
Phoenix, Arizona 85016

Daniel R. Brenden, Maricopa County Attorney
301 West Jefferson Street
Phoenix, Arizona 85009

Maricopa County Board of Supervisors
30i West Jefferson Street, 10th Floor
Phoenix, Arizona 85003

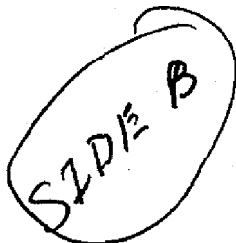
Fran McCarron, Clerk of the Board
Fulton Brock, District 1
Don Stapley, District 2
Andrew Kunasek, District 3
Max Wilson, District 4
Mary Rose Wilcox, District 5

Jennifer Ramsey, Maricopa County
Department of Transportation
2901 West Durango Street
Phoenix, Arizona 85009

Terry Peterson, Maricopa County
Department of Transportation
2901 West Durango Street
Phoenix, Arizona 85009

Ken Medlin, Maricopa County
Department of Transportation
2901 West Durango Street
Phoenix, Arizona 85009

Craig Mousel, Attorney at Law
934 West McDowell Road
Phoenix, Arizona 85007



Signature of party accepting materials

Date