

1 Scott M. McNair
(Plaintiff, Pro Per)

2 [REDACTED]
3 Phoenix, Arizona [REDACTED]
4 [REDACTED]

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

7 SCOTT M. MCNAIR
8 Plaintiff

CASE No. LC2003-000539-001

9 V.

**REPLY TO MOTION FOR DEFAULT
JUDGMENT OF DEFENDANTS MARICOPA
COUNTY, MEDLIN, PETERSON, AND
RAMSEY**

10 MARICOPA COUNTY DEPARTMENT
11 OF TRANSPORTATION, ET AL,
12 Defendants

(Assigned to the Honorable Michael D. Jones)

13
14 **I. PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS**

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

17 In accordance with J.R.A.D.¹ Rule 13, the Plaintiff does hereby request that the Court waive and/or
18 modify any formal procedural requirements in order to insure McNair due process and equitable justice, and
19 to insure that a fair and just determination can be made

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21 **II. STATEMENT OF REPLY**

22 Plaintiff (McNair) does hereby reply to the "Separate Response to Deny Default Judgment" filed by Mr.
23 Daniel Brenden, acknowledging that an error was made by McNair in the calculation of dates, and
24 apologizes to the Court for such.

25 McNair continues to assert that the issue still stands before that the Court that Defendants Maricopa
26 County (and its Department of Transportation), Medlin, Peterson, and Ramsey have not properly filed an
27 answer to the complaint within the 20 day period allowed, and therefore McNair is entitled to Default
28 Judgment for such.

¹ J.R.A.D. refers to the *Arizona Rules of Civil Procedure for Judicial Review of Administrative Decisions*.

1 At the February 10 2003 Jurisdictional Hearing before the Board, even though Brenden now asserted
2 himself as sole counsel for the County, both Brenden and Ms. Cronin appeared and acted as counsel for the
3 County.

4 On June 5 2003 McNair filed a complaint before this Court seeking Judicial Review of Administrative
5 Decision of the decision from the Board.

6 On June 19 2003 the Maricopa County Sheriff's Office served Defendants Maricopa County (i.e.
7 Department of Transportation), Medlin, Peterson, and Ramsey with summons.

8 On July 9 2003, Brenden filed an answer to such with the Court, claiming to be answering on behalf of
9 the County, Medlin, Peterson, and Ramsey.

10 On July 28 2003, McNair filed a "*Motion to Compel Separation of Parties and Counsel*". As of this
11 date, all parties have had ample time to respond, and none have chosen to file a response or object to such.

12 As of this date, no one has filed a "*Notice of Appearance*" with the Clerk of the Superior Court on
13 behalf of any of the Defendants in this case.

14 15 IV. MEMORANDUM AND POINTS OF AUTHORITY

16 Throughout the history of this case, McNair has continually asserted that his complaints against Medlin,
17 Peterson, and Ramsey, were against them as separate individuals, and that as seperate defendants they were
18 each personally liable.

19 The Defendants, each having been accused of prohibited acts independent of the County, are therefore
20 named as Defendants individually and separate from each other and the State.

21 By virtue of statute, the State of Arizona Personnel Board, the County, Kenneth Medlin, Terry Peterson,
22 and Jennipher Ramsey are each defendants in this matter. Relevant statute reads as follows:

23 12-908. Parties

24 In an action to review a final decision of an administrative agency, the agency and
25 **all persons, other than the plaintiff, who are parties of record in the proceedings**
shall be made defendants.

26 A review of the Court docket (Exhibit A) will show that Defendant's Medlin, Peterson, and Ramsey are
27 represented "*pro per*", not by Brenden or any legal counsel. Compounding this, McNair has previously
28 asserted in other motions to this Court that Brenden has failed file to a "*Notice of Appearance*" on behalf of
29 any defendant. Since Brenden has had ample opportunity to file such, and never has, the Court cannot
30 recognize Brendan as counsel for them.

1 As Defendants “*pro per*”, Medlin, Peterson, and Ramsey are each required to file an answer on their
2 own. Which they have not done.

3 Since statute and the Court do not recognize Medlin, Peterson, or Ramsey as being represented by
4 counsel, and since Brenden has failed to provide any legal authority by which the Court should accept his
5 answer on their behalf, the Court must therefore reject such. Consequently, Defendants Medlin, Peterson,
6 and Ramsey have never filed an answer to the complaint and McNair is entitled Default Judgment.

7 As stated previously, Brenden was listed as a witness in this case as early as January 13 2003. As such,
8 he is specifically prohibited by Arizona State Bar Ethic Rules from representing any party in this case. The
9 relevant rule reads in part:

10 **ER 3.7. Lawyer as Witness**

11 (a) A lawyer shall not act as advocate at a trial in which the lawyer is
12 likely to be a necessary witness...

13 In this case, there is no debate as to whether or not Brenden is “*likely*” to be a necessary witness.
14 Brenden was specifically listed as a witness long ago. For reasons known only to Brenden, he has chosen to
15 ignore Arizona State Bar Ethics rules and continues to deliberately violate such by failing to remove himself
16 as counsel in this case. (Beyond this, there are a number of other circumstances which make Brenden’s
17 attempt to represent anyone in this case a conflict of interest and violation of Ethics Rules³.)

18 Given that Brenden and the County were fully aware that Brenden was barred from acting as advocate in
19 this case prior to filing an answer, and that allowing such was deliberate unethical behavior before the
20 Court, the Court is obligated to protect its own integrity and must reject the answer filed by Brenden. Hence,
21 no answer has been filed on behalf of the County (or Medlin, Peterson, or Ramsey), and McNair is entitled
22 to Default Judgment.

23 For the Court to accept any pleadings from Brenden, or allow him to act as counsel in this matter, would
24 be a willful endorsement of unethical behavior, a violation of McNair’s right to due process (and possibly
25 other parties’ rights as well) and provide grounds for appeal.

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³ Since Brenden refuses to abide by State Bar Ethics Rules and voluntarily remove himself as counsel in this case, McNair has filed a separate *Motion to Compel Withdrawal of Counsel and Request for Sanctions* with the Court on this date.

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V. SUMMARY

There has been no “*Notice of Appearance*” filed on behalf of defendants Medlin, Peterson, and Ramsey. Thus, they are duly recognized by the Court as “*pro per*” Defendants.

As Defendants “*pro per*”, Medlin, Peterson, and Ramsey are each required to file a separate answer on their own behalves. Which they have not done.

Brenden is barred by ethics rules from representing anyone, including the County, Medlin, Peterson, and Ramsey, and therefore Brenden may not file an answer on behalf of such.

Having known that Brenden was barred from acting as an advocate in this matter, and by acting in a deliberately unethical manner, the County forces the Court to protect its own integrity by rejecting the answer (and all other pleadings) filed by Brenden.

All of the named Defendants have received a copy of this motion, been provided ample opportunity to rectify the issue by filing individual answers, and have failed to do so.

In view of these facts, no legitimate answer exists in the record for Defendants Maricopa County, Medlin, Peterson, or Ramsey.

VI. CONCLUSION

Since no answer exists in the record that the Court may lawfully recognize, the Court is obligated to grant McNair’s Motion for Default Judgment against defendants Maricopa County, Medlin, Peterson, and Ramsey.

RESPECTFULLY SUBMITTED this 15th day of AUGUST 2003.

By _____
Scott M. McNair
Plaintiff (Pro Per)

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ORIGINAL and copy of the foregoing FILED this 15th day of AUGUST 2003 with:

Clerk of the Court
Superior Court of Arizona, Maricopa County
201 West Jefferson Street
Phoenix, Arizona

COPIES of the foregoing mailed this 15th day of AUGUST 2003 to Defendants:

Sunberg & Mousel
Attn: Craig Mousel
934 West McDowell Road
Phoenix, Arizona 85007
(Counsel for Defendant,
The State of Arizona Personnel Board)

Kenneth Medlin
C/O
Maricopa County Department of Transportation
2901 W. Durango
Phoenix, Arizona 85009
(Defendant Pro Per)

Office of the Maricopa County Attorney
Attn: Dan Brenden
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
(Counsel for Defendants: Maricopa County &
Maricopa County Department of Transportation)

Terry Peterson
C/O
Maricopa County Department of Transportation
2901 W. Durango
Phoenix, Arizona 85009
(Defendant Pro Per)

Jennipher Ramsey
C/O
Maricopa County Department of Transportation
2901 W. Durango
Phoenix, Arizona 85009
(Defendant Pro Per)

By _____

Scott M. McNair
Plaintiff (Pro Per)

EXHIBIT A

Case Information



Case Information			
Case Number	LC2003-000539	Judge	Jones
Case Type	Lower Court Appeals		
File Date	6/512003	Location	Downtown
Party Information			
Party Name Rel		Sex	Attorney
(1)Scott M McNair	PLF/Appellant	Male	CRAIG MOUSEL
(2)Maricopa County Department Of Transportation	DEFT/Appellee		DANIEL BRENDEN
(3)State Of Arizona Personnel Board	DEFT/Appellee		CRAIG MOUSEL
(4)Kenneth Medlin	DEFT/Appellee	Male	Pro Per '
(5)Terry Peterson	DEFT/Appellee	Female	Pro Per
(6)Jennipher Ramsey	DEFT/Appellee	Female	Pro Per
Case Documents			
Filing Date	Description	Docket Date	Filing Party
7/23/2003	MOT - Motion NOTE: FOR DEFAULT JUDGMENT	7/24/2003	PLF/Appellant(1)
7/2312003	MOT - Motion NOTE: TO COMPEL COMPLIANCE WITH TRANSFER OF RECORD REQUIREMENTS	7/25/2003	PLF/Appellant(1)
7/23/2003	MOT - Motion NOTE: TO AMEND COMPLAINT	7/252003	PLFIAppellant(1)
7/22/2003	023 - ME: Order Entered by Court	722/2003	
7/72003	MOT - Motion NOTE: FOR TRIAL DE NOVO AND TRIAL BY JURY	7/812003	PLF/Appellant(1)
7/7/2003	MOT - Motion NOTE: FOR DISCOVERY AND ADMISSION OF NEW AND ADDITIONAL EVIDENCE	7/8/2003	PLF/Appellant(1)
7/2/2003	NOT - Notice NOTE: TRANSMISSION OF THE FILE		
7/2/2003	EXH - Exhibit	7/8/2003	
712/2003	TPR - Tape Record of Proceedings NOTE: 1 TAPE	7/8/2003	
71212003	ODI - ORDER OF DISMISSAL	71312003)
7/21/2003	RES - Response NOTE: OF THE ARIZONA STATE PERSONNEL BOARD	7/8/2003	
6/30/2003	ACS - Acceptance of Service	7/3/2003	
6/27/2003	AFS - Affidavit of Service		
6/27/2003	AFS - Affidavit of Service	713/2003	
6/272003	AFS - Affidavit of Service	7/312003	
6/27/2003	AFS - Affidavit of Service	7/312003	
6/26/2003	023 - ME: Order Entered by Court	6/26/2003	
6/5/2003	APD - Application for Deferral	6/122003	PLF/Appellant(1)
6/5/2003	ODF - ORDER DEFERRING COURT FEES	6/1212003	PLF/Appellant(1)
615/2003	COM - Complaint/Petition		PLF/Appellant(1)
Case Calendar			
Date	Time	Event	
	9:30	Pre-Hearing Conference	
Judgments			