

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

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

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

8 SCOTT M. MCNAIR
9 Plaintiff

CASE No. LC2003-000539-001

10 V.

**RESPONSE TO SEPARATE MOTION TO
DIRECT PLAINTIFF'S
COMMUNICATIONS TO DEFENDANT'S
COUNSEL**

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

(Assigned to the Honorable Michael D. Jones)

14
15 **I. 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 does
17 hereby request leniency from the Court for the form and content of this pleading.

18 In accordance with J.R.A.D.¹ 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
22 **II. RESPONSE**

23 Plaintiff (McNair) does hereby respond to the above referenced motion, requesting the Court to deny
24 such.

25 McNair also requests the Court to impose sanctions against Maricopa County and Mr. Daniel Brenden
26 (Brenden), for the treacherous nature of its actions and subsequent motion.

27
28 **III. MEMORANDUM AND POINTS OF AUTHORITY**

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

1 McNair supports his pleas to the Court based upon the reasons and authority contained herein.

2 **A) Lack of authority to support the motion**

3 The motion submitted by Brenden fails to provide any authority or compelling reason for the Court to
4 grant such. Brenden fails to include citation of any statute, rule of procedure, case, or other authority that
5 would lead the Court to believe that such a motion is warranted, or even lawful.

6 Since Brenden, a bar certified attorney with all the resources of a government agency dedicated to
7 legal matters at his disposal, including a horde of fellow attorneys, cannot cite even one statute, rule, or case
8 to support his request, the Court must presume that none exist. If one did exist, Brenden would surely have
9 cited such.

10 **B) The County (via Brenden) never has, and does not now represent Medlin, Peterson, or Ramsey**

11 This case originated from a complaint before the State of Arizona Personnel Board (Board). In the
12 original matter, Brenden filed a “*Notice of Appearance*” on behalf of the Maricopa County Department of
13 Transportation (MCDOT) **only** (See Exhibit A). When the Court reviews such, it will see that Brenden
14 never mentioned anywhere in such that he was representing anyone other than MCDOT².

15 Brenden has never filed a “*Notice of Appearance*” with the Board or the Court on behalf of those
16 defendants. Since Brenden, as an attorney, is required to be cognizant of the law and the rules of Court, and
17 has been given over eight months in which to formally to declare himself as the attorney of record for
18 Medlin, Peterson, and Ramsey, and refuses to do so, the Court cannot recognize him as such (and neither
19 should McNair). Until Brenden files a “*Notice of Appearance*” on behalf of Medlin, Peterson, or Ramsey,
20 he may not be considered the “*Attorney of Record*” for such, and is barred by A.R.C.P. 5.1 (a)(1) from
21 making any appearance or filing any pleading on behalf of such. The rule reads as follows:

22 **Rule 5.1. Duties of Counsel**

23 (a) (1) Attorney of Record: Duties of Counsel. No attorney shall appear in any action or
24 file anything in any action without first appearing as counsel of record. In any matter,
25 even if it has proceeded to judgment, there must be a formal substitution or association of
26 counsel **before** any attorney, who is not an attorney of record, may appear.

² McNair filed a motion to reject Brenden’s *Notice of Appearance* before the Board based on an unethical conflict of interest, which Brenden ignored then and continues to ignore before this Court.

1 Since Brenden has never filed a “*Notice of Appearance*” on behalf of Medlin, Peterson, or Ramsey, he
2 is **not** the “*Attorney of Record*” for such, and therefore the Court is barred from accepted this motion (or
3 any other pleading) from Brenden on behalf of those defendants.

4 Brenden’s lack of authority to act on behalf of Medlin, Peterson, and Ramsey is confirmed by the
5 attached print out of the Court’s Docket (Exhibit B), which clearly shows the Court recognizes the
6 defendants as defendants “*pro per*”.

7 To further this point, neither Brendan nor any of the name defendants have provided McNair (or the
8 Court) with any written document to show that Brenden is authorized act on behalf of such. None of them
9 have provided even a limited power of attorney to assert Brenden’s authority. Since there exists question as
10 to whether Medlin, Peterson, or Ramsey have ever authorized Brenden to act on their behalf, they each have
11 a legal responsibility to provide some written proof to that effect. For guidance, the Court may wish to
12 review *Villanueva v. Brown* (U.S. 3rd Circuit, 95-5072, January 1997)

13 "A power of attorney is an instrument in writing by which one person, as principal,
14 appoints another as his agent and confers upon him the authority to perform certain
15 specified acts or kinds of acts on behalf of the principal." *Kisselbach v. County of*
16 *Camden*, 638 A.2d. 1383, 1386 (N.J. Super. Ct. App. Div. 1994). The primary purpose
17 of a power of attorney is not to define the authority conferred on the agent by the
18 principal, but to provide third persons with evidence of agency authority. *Id.*

18 **C) McNair has a legal obligation to send pleadings to Medlin, Peterson, and Ramsey**

19 In previous pleadings before the Board and this Court, McNair has repeatedly emphasized that Medlin,
20 Peterson, and Ramsey are individual defendants, separate from the County and the Board. McNair has cited
21 numerous laws and rules that require Medlin, Peterson, and Ramsey to be recognized as individual and
22 separate parties, including A.R.S. §12-908 that reads:

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
26 shall be made defendants.

27 Until such time as the defendants have retained counsel and the Court and all other parties have been
28 formally notified of such, McNair is required under A.R.C.P.³. 5(a) to serve each party with a copy of any
and all pleadings. A.R.C.P. 5(a) reads as follows:

³ A.R.C.P refers to the *Arizona Rules of Civil Procedure*

1 **Rule 5(a). Service: When Required**

2 Except as otherwise provided in these rules, every order required by its terms to be served,
3 every pleading subsequent to the original complaint ... shall be served upon each of the
4 parties.

5 Since counsel does not represent the named defendants, McNair (and all other parties) are required by
6 law to serve them each with a copy of any and all pleadings.

7 **D) Brenden’s motion is moot by previous motions of McNair**

8 McNair has repeatedly asserted that the County’s attempts to act as counsel for Medlin, Peterson, and
9 Ramsey, is unlawful, unethical, a conflict of interest, and barred by statute and ethics rules. The County (and
10 the Board) has continually refused to recognize and abide by this.

11 Therefore, on July 28 2003 McNair filed a “*Motion to Compel Separation of Parties and Counsel*” with
12 this Court to force the County to abandon its unlawful attempts to represent defendants Medlin, Peterson,
13 and Ramsey. Unlike Brenden’s motion, McNair’s motion included numerous citations of authority to
14 support his request.

15 Since the County has **never responded** McNair’s motion and failed to provide any authority for the
16 Court to deny such, it must be presumed that the County has no objection to this separation, and the Court is
17 therefore obligated to grant McNair’s motion for separation.

18 In light of such, Brenden’s motion is mooted by his silence of McNair’s motion.

19 Since the issue of the County (Brenden) attempting to represent Medlin, Peterson, and Ramsey was
20 previously addressed by McNair’s motion, without response from the County (Brenden), under the principle
21 of *res judicata* Brenden is barred from the raising the issue again.

22 Similarly, under the principle of *collateral estoppel* Brenden’s motion is barred since the issue of
23 whether or not Brenden should receive copies of pleadings destined for Medlin, Peterson, or Ramsey would
24 again raise the issue of his lawful authority to represent such.

25 **E) Brenden’s motion is barred by conflict of interest**

26 McNair has previously filed motions before the Board and the Court to have Brenden removed as
27 counsel for any party in this matter under conflict of interest principles. Brenden, being named as a witness
28 in the proceedings before the Board, to be named as a witness in this action, and subject to prosecution for
29 his criminal acts against McNair related to discovery in this matter, clearly has conflict of interest issues.
30 Subsequently, he was long ago required to voluntarily withdraw himself for representing anyone in this
 matter, and therefore he is barred from filing this motion.

1 This conflict of interest is not limited to Brenden individually. As the County (and State) carries
2 responsibility to investigate Medlin, Peterson, and Ramsey for their unlawful acts that led to this action, the
3 County (and State) being separate defendants in this matter creates a clear conflict of interest towards the
4 interest of Medlin, Peterson, and Ramsey.

5 By virtue of each of these separate defendants being involved in the same case, conflict of interest is
6 bound to occur.

7 Actual conflict is more likely to occur in cases of joint representation (of co-
8 defendants at the same trial) than in cases of multiple representation. See United
9 States v. Morelli, 169 F.3d 798, 810 (3d Cir.), cert. denied, 528 U.S. 820 (1999);

10 Given such circumstances, the Court must reject this and any other motion filed by Brenden (or the
11 County or State) on behalf of Medlin, Peterson, and Ramsey, since its true motive my not be in the best
12 interest of the named defendants.

13 **F) Brenden’s letter and subsequent motion are contemptible acts**

14 Starting with McNair’s initial complaint to the County on July 17 2002, the County has maintained a
15 crusade of stonewalling, persecution, harassment, and retaliation against McNair for his attempts to assert
16 and protect his right. The County (via Brenden) now challenges the integrity of the Superior Court by
17 requesting that the Court endorse this continuing violation of McNair’s rights.

18 The content and tone of Brenden’s letter to McNair⁴ is clearly intended to intimidate and interfere with
19 McNair’s rights to due process in this case.

20 Brenden states: *“In addition, this precludes your contact with management/supervisors without going*
21 *through me.”* McNair has the legal right to contact potential witnesses and to pursue other forms of
22 discovery in his case. Brenden’s letter is clearly intended to prevent McNair from such. Nowhere does
23 Brenden cite any statute or rule of court that requires one party (McNair) to seek the “prior permission” of
24 another party (Brenden) before contacting witnesses, or to pursue discovery.

25 To compound this outrage against the Court, Brenden attempts to interfere with the due process rights
26 of Medlin, Peterson, and Ramsey, by preventing them from receiving and responding to pleadings they are
27 directly affected by. Brenden asserts to McNair that, *“All communications are to be sent to me and do not*
28 *copy the Defendants.”*

⁴ See Defendant’s “Attachment 1” of Brenden’s motion.

1 Brenden completes his perfidious act by threatening McNair with, *“If you continue to contact any of*
2 *the Defendants or any managerial/supervisory employees without my knowledge, I will have no choice but*
3 *to report this to the Court.”* McNair has the right to have direct contact with any party in this matter when
4 he chooses, and no party is not required to seek the permission of another party (Brenden) before doing. Nor
5 is any party required to notify Brenden of any such contact.

6 It would appear by this statement that Brenden is declaring his personal influence over the Court is of
7 such a magnitude that the Court would willfully violate the rights of McNair (and any other party) merely at
8 the bequest of Brenden.

9 Brenden’s letter to McNair and subsequent motion before this Court are blatant and deliberate acts of
10 intimidation and interference with McNair’s right to due process, and, the due process rights of the
11 Defendants.

12 13 **IV. CONCLUSION**

14 Brenden’s motion is without merit or support of legal authority, and should be denied.

15 The County (via Brenden) has no legal authority to act or file pleadings on behalf of Medlin,
16 Peterson, and Ramsey. Hence the motion should be denied, and the County should be barred from any
17 further attempts at such unlawful representation.

18 Brenden’s actions on behalf of the County, including his threatening letter to McNair and this
19 motion, violates the due process rights of McNair, Medlin, Peterson, and Ramsey. It is unmistakably
20 intended to consciously compromise the integrity of this Court and these proceedings. In response to
21 such, the Court should impose severe sanctions upon the County (and Brenden personally) for their
22 never-ending campaign of deceit and treachery against this Court, McNair, and the other parties.

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26 RESPECTFULLY SUBMITTED this 20th day of AUGUST 2003.

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28 By _____

29 Scott M. McNair
30 Plaintiff (Pro Per)

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ORIGINAL and copy of the foregoing FILED this 20th 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 20th 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

1 RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

2 By: DANIEL R. BRENDEN
3 Deputy County Attorney
4 State Bar No. 016395
MCAO Firm No. 00032000

5 DIVISION OF COUNTY COUNSEL
6 Security Center Building
7 222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-2206
Telephone (602) 506-8541

8 Attorneys for Respondent Maricopa County

9 THE STATE OF ARIZONA

10 PERSONNEL BOARD

11 SCOTT M. MCNAIR,

DOCKET NO. 02-56

12 Complainant,

NOTICE OF APPEARANCE

13 v.

14 MARICOPA COUNTY DEPARTMENT OF
15 TRANSPORTATION,

16 Respondent.

17
18 NOTICE IS HEREBY GIVEN that the undersigned counsel, Daniel R.
19 Brenden, enters his appearance as an attorney of record of Plaintiff, Maricopa
20 County Department of Transportation.

21

22

OFFICE OF THE MARICOPA COUNTY ATTORNEY
DIVISION OF COUNTY COUNSEL
222 NORTH CENTRAL, SUITE 1100
PHOENIX, ARIZONA 85004-2206
(602) 506-8541 (602) 506-8567 (FAX)

1 All future correspondence should be addressed to Daniel R. Brenden at
2 the following address:

3 Daniel R. Brenden
4 Maricopa County Attorney's Office
5 Division of County Counsel
6 222 North Central Avenue, Suite 1100
7 Phoenix, Arizona 85004-2206

8 DATED this 1 day of January 2003.

9 RICHARD M. ROMLEY
10 MARICOPA COUNTY ATTORNEY

11 By DAN Brenden

12 Deputy County Attorney
13 Attorneys for Defendant Maricopa County

14 ORIGINAL of the foregoing FILED
15 and copy hand-delivered this 17
16 day of January 2003, to:

17 The Honorable Harold J. Merkow
18 Hearing Officer
19 State Personnel Board
20 1400 West Washington Street, Suite 280
21 Phoenix, Arizona 85007-2939

22 and COPY mailed this 17 day
of January 2003, to:

Scott M. McNair
[REDACTED]
Phoenix, Arizona [REDACTED]
Complainant

George Colorado

EXHIBIT B

Case Information



Search

Case Information			
Case Number	LC2003-000539	Judge	Jones
Case Type	Lower Court Appeals		
File Date	6/5/2003	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)
7/23/2003	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	7/25/2003	PLF/Appellant(1)
7/22/2003	023 - ME: Order Entered by Court	7/22/2003	
7/7/2003	MOT - Motion NOTE: FOR TRIAL DE NOVO AND TRIAL BY JURY	7/8/2003	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	
7/12/2003	TPR - Tape Record of Proceedings NOTE: 1 TAPE	7/8/2003	
7/12/2003	ODI - ORDER OF DISMISSAL	7/13/2003	
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	
6/25/2003	AFS - Affidavit of Service		
6/27/2003	AFS - Affidavit of Service	7/13/2003	
6/27/2003	AFS - Affidavit of Service	7/31/2003	
6/27/2003	AFS - Affidavit of Service	7/31/2003	
6/26/2003	023 - ME: Order Entered by Court	6/26/2003	
6/5/2003	APD - Application for Deferral	6/12/2003	PLF/Appellant(1)
6/5/2003	ODF - ORDER DEFERRING COURT FEES	6/12/2003	PLF/Appellant(1)
6/15/2003	COM - Complaint/Petition		PLF/Appellant(1)
Case Calendar			
Date	Time	Event	
	9:30	Pre-Hearing Conference	
Judgments			