

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
9
10 V.
11 MARICOPA COUNTY DEPARTMENT
12 OF TRANSPORTATION, ET AL,
13 Defendants

CASE No. LC2003-000539-001

MOTION FOR RECONSIDERATION

(Assigned to the Honorable Michael D. Jones)

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
16 does 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,
19 and to insure that a fair and just determination can be made

20 **II. SCOPE OF MOTION**

21 In accordance with A.R.C.P. 7.1 (e)², the Plaintiff does hereby request the Court to reconsider and
22 reverse the rulings and orders rendered by such during the pre-trial conference held on September 22,
23 2003 (filed by the Court on September 26 2003), concerning the following subjects:

- 24 1) Defendant's Motion to Direct Plaintiff's Communications to Defendant's Counsel
- 25 2) Denial of Trial De Novo
- 26 3) Denial of Trial By Jury
- 27 4) Oral Argument and delay of rulings on the Plaintiff's motions

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

² A.R.C.P. refers to the *Arizona Rules of Civil Procedure for the Superior Courts of Arizona*

1 McNair seeks reconsideration and reversal of these rulings based upon the memorandum, legal
2 points, statutes and authorities contained herein.

3 Of the greatest significance to the Court in considering reconsideration, is that all of the rulings
4 made are dependent upon motions already filed with the Court that were not reviewed **before** these
5 rulings were made.

6 **III. DEFENDANT’S MOTION TO DIRECT PLAINTIFF’S COMMUNICATIONS TO**
7 **DEFENDANT’S COUNSEL**

8 On August 5 2003, Mr. Daniel Brenden (Brenden) filed the above-entitled motion with the Court
9 asserting that he was “counsel” for Defendants Medlin, Peterson, and Ramsey (and the Maricopa
10 County Department of Transportation). At the September 22nd pre-trial proceedings, the Court
11 summarily granted Brenden’s motion.

12 Even before the commencement of these proceedings, it has been recurrently disputed as to whether
13 or not the Maricopa County Department of Transportation (MCDOT) is lawfully enabled to provide
14 legal representation for the individual Defendants Medlin, Peterson, and Ramsey. McNair has
15 continually raised with the Court the issues that 1) it is a conflict of interest for MCDOT to do so, 2)
16 MCDOT has failed to file any *Notice of Appearance* on behalf of these individual Defendants, and 3)
17 MCDOT has never provided any proof that it has permission from the individual Defendants to act on
18 their behalf.

19 It has also been brought to the Court’s attention that Brenden is a listed as a witness in this case and
20 that according to Arizona State Bar Ethics Rule 3.7, Brenden is barred from representing **anyone** in this
21 matter. Since Brenden is barred from representing anyone in this matter, the Court is bound to
22 summarily reject any and all pleadings submitted by Brenden, including Brenden’s *Motion to Direct*
23 *Plaintiff’s Communications to Defendant’s Counsel.*³

24 Prior to Brenden’s motion, on July 28 2003 McNair filed a *Motion to Compel Separation of Parties*
25 *and Counsel*, specifically requesting the Court to order that MCDOT and the individual Defendants be
26 separated as parties. Brenden failed to file a response to McNair’s motion, and therefore in accordance
27 with A.R.C.P. 7.1, the Court is compelled to summarily grant McNair’s motion ordering MCDOT to
28 cease representation of the individual Defendants (Medlin, Peterson, and Ramsey).

³ A motion compelling Brenden to withdraw and seeking sanctions against him for refusing to do so voluntarily is currently pending before the Court. Brenden has acknowledged this motion and continues to violation ER 7.1 by refusing to withdraw.

1 Given the above, the Court is faced with two indisputable facts: 1) Brenden is barred from
2 submitting any pleading to this Court, and therefore the Court may not lawfully consider or rule upon
3 this motion, 2) by failing to respond to McNair's motion to separate MCDOT from the individual
4 Defendants (Medlin, Peterson, and Ramsey), the Court must summarily order such by default.

5 Hence, there is no legal grounds for the Court to accept or consider the *Defendant's Motion to Direct*
6 *Plaintiff's Communications to Defendant's Counsel*, the motion is mooted, and in the interest of
7 equitable justice and due process, the Court is compelled to reverse its ruling and deny this motion.

8 IV. TRIAL DE NOVO

9 Included in McNair's complaint to the Court, and in accordance with J.R.A.D. Rule 11 and A.R.S. §
10 12-910(C), McNair has demanded a *Trial de Novo*. Also in accordance with the requirements of statute
11 and rules of procedure, McNair subsequently filed a separate motion for a *Trial de Novo* on July 7 2003.
12 At the September 22nd pre-trial proceedings, the Court summarily denied such.

13 The Plaintiff asserts that by provision of law he is rightfully entitled to receive a "*Trial De Novo*",
14 as specified in A.R.S. § 12-910(C).

15 A.R.S. § 12-910(C) reads in part:

16 "the trial shall be de novo if *trial de novo* is **demanded in the complaint** or answer of a
17 defendant other than the agency and if a hearing was not held by the agency..."

18
19 By the above statute, a demand for *Trial de Novo* is subject to two specific requirements. Those
20 being:

- 21 1) It is demanded in the complaint,
- 22 2) If a hearing was not held by the agency...

23
24 By McNair including a demand for such in his complaint, requirement #1 is met.

25 Requirement #2 is met in that no hearing was ever held upon the "merits and substance" of McNair's
26 complaint before the State of Arizona Personnel Board.

27 Since McNair meets **both** of these specific and statutory prerequisites, the Court's denial of
28 McNair's demand for a *Trial de Novo* is in direct contradiction with the law. For that reason the Court
29 must reverse its previous ruling and grant McNair's demand for such.

1 **V. TRIAL BY JURY**

2 Included in McNair’s complaint to the Court, and in accordance with J.R.A.D. Rule 11 and A.R.S. §
3 12-910(C), McNair has demanded a *Trial by Jury*. Also in accordance with the requirements of statute
4 and rules of procedure, McNair subsequently filed a motion for a *Trial by Jury* on July 7 2003. At the
5 September 22nd pre-trial proceedings, the Court summarily denied such.

6 The Plaintiff asserts that by provision of law he is rightfully entitled to receive a *Trial by Jury*, as
7 specified in A.R.S. § 12-910(C).

8 A.R.S. § 12-910(C) reads in part:

9

C. For review of final administrative decisions of agencies.... <u>On demand of any</u> 10 <u>party</u> , if a trial de novo is available under this section, it may be <u>with a jury</u> ,

11
12 Since McNair has met the requirements for a *Trial de Novo* and filed a motion demanding *Trial by*
13 *Jury*, he is therefore lawfully entitled to such.

14 Accordingly, the Court’s denial of McNair’s demand for a *Trial by Jury* is in direct contradiction
15 with the law, and therefore the Court must reverse its previous ruling and grant McNair’s demand for
16 such.

17 **VI. ORAL ARGUMENT AND DELAY OF RULINGS ON PLAINTIFF’S MOTIONS**

18 In the Court’s Minute Entry of September 22 2003, it was order resetting a “Prehearing Conference”
19 for November 24 2003. The Minute Entry also states, “...*any pending motions filed by the Plaintiff will*
20 *be heard at that same time...*”

21 The Plaintiff (McNair) objects to both the allowance of oral argument and the delay of rulings on
22 these motions.

23 None of McNair’s motions requested oral argument, nor did the Defendants request oral argument
24 on such. Since the Rules of Civil Procedure require that any request for Oral Argument be included in
25 the original motion or subsequent response, there are no grounds for the Court to accept such at this
26 time. Furthermore, the Defendants have failed to file responses to some of McNair’s motions and in
27 other instances failed to respond within the lawfully allotted time. The Court is therefore obligated to
28 grant some of McNair’s motions by default. Allowing the Defendants opportunity to orally argue
29 motions they failed to respond to would be a violation of due process and an injustice to McNair.

1 The motions submitted by McNair have been outstanding with this Court for several weeks, if not
2 months. Since the outcome of these motions affects the manner in which all parties will prepare for and
3 proceed with the rescheduled prehearing conference, it is in the best interests of the Court to expediently
4 rule upon such now.

5 Of even greater significance are those motions directly affecting the right to Counsel of individual
6 Defendants (Medlin, Peterson, and Ramsey). Given that the Court is obligated by default to separate
7 these parties and require them to obtain new counsel, the Court should rule as such immediately. Failure
8 to do so would be an injustice against the individual Defendants (Medlin, Peterson, and Ramsey) by
9 denying them ample opportunity to obtain counsel and prepare for the next conference.

10 VII. CONCLUSION

11 By the points submitted herein, it should be obvious that the Court erred in its previous rulings on
12 the above matters. Rather than give grounds for further appeal and additional proceedings, the Court
13 should exercise its ability to correct those errors now by:

- 14 1) Recognizing that Brenden has no legal authority to represent **anyone** in this matter and
15 therefore: a) the Court has no grounds by which to accept or consider the *Defendant's*
16 *Motion to Direct Plaintiff's Communications to Defendant's Counsel*, b) such is mooted
17 by McNair's other motions, and accordingly the Court should reverse its ruling on such,
- 18 2) Granting McNair's lawfully protected demand for a *Trial de Novo*,
- 19 3) Granting McNair's lawfully protected demand for a *Trial by Jury*,
- 20 4) Finally, the Court should expedite the motions of McNair now so that all parties can
21 obtain new counsel and prepare for further proceedings in this matter.

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25 RESPECTFULLY SUBMITTED this 6th day of OCTOBER 2003.

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27 By _____
28 Scott M. McNair, Plaintiff Pro Per

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FILED and delivered this 6th day of OCTOBER 2003.

By _____

Scott M. McNair, Plaintiff Pro Per

ORIGINAL of the foregoing FILED with:

Clerk of the Court
Superior Court of Arizona, Maricopa County
201 West Jefferson Street
Phoenix, Arizona 85003

COPY of the foregoing HAND DELIVERED to:

Honorable Michael D. Jones
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

COPIES of the foregoing MAILED to Defendants:

Sunberg & Mousel
Attn: Craig Mousel
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(Counsel for Defendant, The State of Arizona Personnel Board)

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