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RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

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

MARY C. CRONIN
Deputy County Attorney
State Bar No. 010816
MCAO Firm No. 00032000

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

Attorneys for Defendant Maricopa County

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

SCOTT M. MCNAIR,

Plaintiff,

v.

MARICOPA COUNTY DEPARTMENT
OF TRANSPORTATION; STATE OF
ARIZONA PERSONNEL BOARD;
KENNETH MEDLIN; TERRY
PETERSON; JENNIPHER RAMSEY,

Defendants.

NO. LC 2003-000530-002-DT

**SEPARATE RESPONSE TO DENY
MOTION FOR CHANGE OF JUDGE
BY DEFENDANTS MARICOPA
COUNTY DEPARTMENT OF
TRANSPORTATION, MEDLIN,
PETERSON, AND RAMSEY**

(Assigned to the Honorable
Michael D. Jones)

1 Defendants Maricopa County Department of Transportation (MCDOT),
2 Kenneth Medlin, Terry Peterson and Jennipher Ramsey, by their counsel, hereby
3 responds to Plaintiff's Motion for Change of Judge and requests that this Court
4 deny Plaintiff's motion.

5 **PLAINTIFF IS NOT ENTITLED TO A CHANGE OF JUDGE.**

6 **I. PLAINTIFF INCORRECTLY RELIES ON RULE 13 TO SUPPORT HIS**
7 **REQUEST FOR A CHANGE OF JUDGE.**

8 Arizona Rules of Civil Procedure specifically Rule 13, Rules of Procedure
9 for Judicial Review of Administrative Decisions does not support Plaintiff's Motion
10 for Change of Judge. This rule only addresses the Court's ability to relax the
11 rules formal requirements for tiling of briefs and pleadings if the party has shown
12 exceptional circumstances or a lack of training. This rule does not address a
13 party's ability to request a change of judge.

14 **II. PLAINTIFF HAS WAIVED HIS RIGHT TO A CHANGE OF JUDGE.**

15 Plaintiff waived his right to a change of judge in this matter since this Court
16 has already held a pre-scheduling conference and made substantive rulings on
17 three contested motions. Specifically Rule 42(f) 1. (D), Arizona Rules of Civil
18 Procedure states:

19 ... a party waives the right to change of that judge as a matter of
right when:

20 (aa) the judge rules on any contested issue; or

21 (bb) the judge grants or denies a motion to dispose of one or more
claims or defenses in the action; or

22 (cc) the judge holds a scheduled conference .. .

1 The Court held a Prehearing Conference on September 22, 2003, at which
2 time the Judge ruled on three motions:

- 3 1) Plaintiff's request for a Trial de Novo which was denied;
- 4 2) Plaintiff's request for a Trial by Jury which was denied; and
- 5 3) Defendant's Motion to direct Plaintiff to communicate with
6 defendants' counsel and not the individual parties which was
 granted.

7 As a result, Plaintiff's Motion for Change of Judge is not timely since this
8 Court has ruled on these contested matters.

9 **III. PLAINTIFF'S MOTION IS UNTIMELY.**

10 On June 5, 2003, Plaintiff filed his complaint. On July 7, 2003, Defendants
11 received a Minute Entry (filed on June 26, 2003) that indicated that Judge
12 Michael Jones was the assigned Judge. Rule 42(f)(c) 2, Arizona rules of Civil
13 Procedure, requires a party to file an affidavit requesting a change of judge within
14 20 days of discovery that grounds exist for a change of judge. Furthermore,
15 Plaintiff has failed in his motion to articulate any basic grounds which exist
16 warranting a change of judge. Instead, Plaintiff in his affidavit just makes a
17 conclusory allegation that Plaintiff believes that he cannot obtain a fair and an
18 impartial trial from Judge Michael D. Jones. This, however, does not even
19 minimally comply with the requirements of Arizona Revised Statute 12- 409.

20 Plaintiff's assertion in his motion that because of bias, prejudice, or interest
21 of the Judge, Plaintiff cannot obtain a fair and impartial trial is not sufficient.
22 While Plaintiff makes that assertion, his motion does not provide any grounds to

1 support that claim. It is apparent that the real reason for Plaintiff's Motion for a
2 Change of Judge is because of Judge Jones' rulings at the September pre-
3 scheduling conference. This, however, is insufficient grounds to support a
4 change of judge.

5 Defendants therefore respectfully request that Plaintiff's Motion for a
6 Change of Judge be denied.

7 RESPECTFULLY SUBMITTED this _____ day of November 2003.



8
9 RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

10 BY: *Daniel R Brenden*
11 DANIEL R BRENDEN
12 MARY CRONIN
Deputy County Attorney
13 Attorney for Defendants

14 ORIGINAL of the foregoing FILED
15 and copy HAND-DELIVERED this
25th day of November 2003, to:

16 Honorable Michael D. Jones
17 Judge of the Superior Court
Central Court Building, Suite 10A
201 West Jefferson Street
18 Phoenix, Arizona 85003

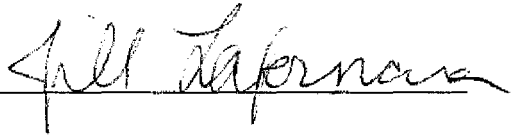
19 and COPY mailed to:

20 Scott M. McNair

21 Phoenix, Arizona 
22 Plaintiff Pro Per

1 *Craig Mousel, Esq.*
SUNDBERG & MOUSEL
2 934 West McDowell Road
Phoenix, Arizona 85007
3 Attorney for Defendant State of
Arizona Personnel Board

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A handwritten signature in cursive script, appearing to read "Will Tapernau", is written over a horizontal line. The signature is positioned to the right of a vertical line that runs down the page.

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