

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 V.

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

CASE No. LC2003-000539-001 DT

**NOTICE OF INACCESSIBILITY OF
COURT RECORDS TO PLAINTIFF**

(Assigned to the Honorable Michael D. Jones)

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

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

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

19 **II. HISTORY AND DISCUSSION**

20 This case is an appeal for a judicial review of administrative decision from the State of Arizona
21 Personnel Board (Board), case 02-056. On June 5 2003, the Plaintiff (McNair) filed this action in the
22 Superior Court of Arizona in Maricopa County.

23 Following such, J.R.A.D. 5 and A.R.S. §12-904.B.5 requires the Board to transmit an index of the
24 Board's record along with the complete record to the superior court, and deliver a copy of the index to
25 all other parties.

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

1 On July 2 2003 the Board mailed a “letter” to McNair containing a vague description of what had
2 been transferred to the Superior Court (See attached exhibit A).

3 On July 23 2003, McNair filed a “Motion To Compel Compliance With Transfer Of Record
4 Requirements” requesting the court to order the Board to comply with the requirements of J.R.A.D. 5
5 and A.R.S. §12-904.B.5 by creating and supplying a detailed index of the record and documents
6 transferred to the superior court.

7 The Board failed to respond to this motion.

8 On September 22 2003, the court held a prehearing conference before the Hon. Michael D. Jones.
9 During this conference McNair addressed with the Court the subject of the Board’s non-compliance with
10 the requirements to properly transmit a complete record and detailed index of such to the superior court.

11 Rather than order the Board to comply with these statutory requirements, Judge Jones instead
12 ordered all parties to review the record currently held by the Clerk of the Court to “...*distinguish what*
13 *has actually been filed with the Clerk of the Court.*” Judge Jones then ordered that the prehearing
14 conference be reset to November 24 2003, for the purpose of “...*evaluating the sufficiency of the record*
15 *in this case.*”

16 On November 17 2003, McNair filed a “Notice of Appeal” declaring his intent to file an appeal with
17 the Arizona Court of Appeals.

18 On November 21 2003, McNair went to the office of the Clerk of the Court at 601 West Jackson,
19 Phoenix Arizona, and was denied access to the case file by a court employee that refused to give their
20 full name. (See attached affidavit, Exhibit B)

21 On November 24 2003, the Court held a second prehearing conference in this matter. Even though
22 both McNair and the County had requested a court reporter for the conference, none was present. Since
23 no court reporter was present, Judge Jones accepted only written submissions from the parties and ended
24 the conference. Prior to ending the conference, counsel for the Board handed Judge Jones a sealed
25 envelope, claiming it “*completed the record*”. The contents of this sealed envelope have never been
26 disclosed to or made available to McNair.

27 ...

1 On December 17 2003, the Clerk of the Superior Court prepared and transmitted to the Arizona
2 Court of Appeals an index of the record/case file of this action. The index prepared by the Clerk of the
3 Court lists three separate items as “*PHOTOCOPY COVERSHEET OF SEALED DOCUMENT*”. This
4 index (See attached Exhibit C) lists items 12, 13, and 48 as **SEALED DOCUMENT(s)**.

5 On February 18 2004, a third prehearing conference was held in this matter before Hon. Michael D.
6 Jones. Judge Jones stated that the purpose of this conference was to evaluate the sufficiency of the
7 record in this case. Judge Jones began the conference by asking McNair for his comments on the issue.
8 McNair responded by saying that he “*had no idea what is in the record.*”

9 Following this, McNair attempted to explain to Judge Jones how: a) the Board had failed to file a
10 proper index of the record transferred, thereby making it impossible for McNair to discern what
11 “should” or “should not” be in the record, b) how Judge Jones failed to enforce the statutes which
12 required the Board to file a proper index, c) how McNair had been denied access to the record/case file
13 by the Clerk of the Court’s office, and d) how McNair’s had never been privy to the contents of the
14 **sealed envelope(s)** previously supplied to Judge Jones by counsel for the Board.

15 At that point, Judge Michael D. Jones erupted into a screaming tirade aimed at McNair. Judge Jones
16 berated McNair for claiming that the court had received a “sealed envelope”, and then in a boisterous fit,
17 verbally assaulted McNair for the Clerk of the Court’s refusal to produce or divulge the whereabouts of
18 the record/case file.

19 After Judge Jones concluded his diatribe of McNair, McNair attempted to respond by showing him
20 the Clerk’s index clearing listing the **“sealed envelope(s)”** contained in the record. Judge Jones refused
21 to allow him to speak or produce the clerk’s index, and renewed his belittlement of McNair.

22 Succeeding this, Judge Jones then began summarily denying the majority of the motions filed by
23 McNair (some over five months old), without reading them.

24 Judge Michael D. Jones then concluded the conference by arbitrarily setting a filing schedule for the
25 submission of judicial review briefs of this action.

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FILED and delivered this 10th day of MARCH 2004.

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
934 West McDowell Road
Phoenix, Arizona 85007
(Counsel for Defendant, The State of Arizona Personnel Board)

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,
Medlin, Peterson, & Ramsey)

EXHIBIT A



STATE OF ARIZONA

JANET A. NAPOLITANO, Governor

PERSONNEL BOARD

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

BOARD MEMBERS

SEYMOUR CHAIR
LYNDA THOMPSON
BECKY JORDAN
GWENDOLYN HATCHER
WANDA F. MOORE

July 2, 2003

Craig Mouse!
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
O. CARDENAS
DEPUTY CLERK

RE: SCOTT M. McNAIR

CASE #LC 2003-000539-001

vs.

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, et al.

Dear Mr. Searles:

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.

July 2, 2003

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

cc: ✓ Scott M. McNair

████████████████████
Phoenix, Arizona ██████████

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

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

Fran McCarroll, 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

Jennipher 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

EXHIBIT B

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 **V.**

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

CASE No. **LC2003-000539-001 DT**

PLAINTIFF'S AFFIDAVIT IN SUPPORT
OF NOTICE OF INACCESSIBLE RECORD

(Assigned to the Honorable Michael D. Jones)

13 STATE OF ARIZONA)

14) ss.

15 County of Maricopa)

16
17 **SCOTT MCNAIR**, being first duly sworn, upon oath deposes and says that:

- 18 1. He is the **PLAINTIFF** in the above-entitled action and files this affidavit in support of his
19 "NOTICE OF INACCESSIBILITY OF COURT RECORDS TO PLAINTIFF".
- 20 2. That on November 21 2003, McNair did visit the office of the Clerk of the Court for the Maricopa
21 County Superior Court of Arizona at 601 West Jefferson, Phoenix Arizona, with the intent to review
22 the case record/file of this case in compliance with the order of the Hon. Michael D. Jones, dated
23 September 22 2003.
- 24 3. That on November 21 2003, an unnamed employee of the Clerk's office informed McNair that the
25 file was "unavailable" because it had been "checked out".
- 26 4. That McNair did inquire with the employee as to: a) whom had "checked it out", b) when it had
27 been "checked out", and c) when it would be returned.

- 1 5. That the employee: a) refused to divulge the name of the person that had "checked out" the file, b)
2 refused to divulge the current location of the file, and, c) could not provided any means to determine
3 how long the file would be unavailable or when the file would be returned.
- 4 6. That the employee stated it was "against court policy" to provide this information to McNair.
- 5 7. That during this conversation with the employee, McNair repeatedly informed the employee that he
6 was the Plaintiff in this case and that he was under order by the Court to review this file in person.
- 7 8. That during this conversation McNair offered the employee a copy of the order by Hon. Michael D.
8 Jones instructing McNair to review the file at the Clerk's office.
- 9 9. That McNair did ask the employee for their full name, and that the employee refused to provide
10 their full name, claiming it was "against county policy" to divulge such.
- 11 10. After this exchange, McNair then left the Clerk of the Court's office.

12

13 DATED and SWORN this 10th day of MARCH 2004.

14

15 By [REDACTED]

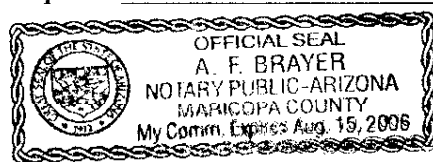
16 Scott M. McNair, Plaintiff Pro Per

17

18 SUBSCRIBED AND SWORN to before me this 10th day of MARCH 2004

19

20 My commission expires: 8-15-2006



24

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26

27

Notary Public

EXHIBIT C

Clerk of the Superior Court
Customer Services Division
Appeals Section / CS - AP
Phone: (602) 506-7775

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LC2003-000539-001 DT
APPEAL NO. 1

DUE DATE: 12/17/2003

PLAINTIFF

SCOTT M. MCNAIR

VS

DEFENDANT

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, ET AL

INDEX

ITEM NO.	DESCRIPTION	HEARING DATE	FILE DATE
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3	APPLICATION FOR DEFERRAL OR WAIVER OF COURT FEES AND COSTS AND CONSENT TO ENTRY OF JUDGMENT		06/05/2003
4	MINUTE ENTRY ORDER ENTERED BY COURT	06/16/2003	06/26/2003
5	CIVIL PROCESS SECTION		06/27/2003
6	CIVIL PROCESS SECTION		06/27/2003
7	CIVIL PROCESS SECTION		06/27/2003
8	CIVIL PROCESS SECTION		06/27/2003
9	ACCEPTANCE OF SERVICE		06/30/2003

* OUT OF DATE ORDER

ITEM NO.	DESCRIPTION	HEARING DATE	FILE DATE
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10	TRANSMISSION OF FILE		07/02/2003
Volume Number 3			
11	SEPARATE RESPONSE OF THE ARIZONA STATE PERSONNEL BOARD		07/02/2003
12	PHOTOCOPY COVERSHEET OF SEALED DOCUMENT (EXHIBIT)		07/02/2003
13	PHOTOCOPY COVERSHEET OF SEALED DOCUMENT (TAPE)		07/02/2003
14	ORDER REGARDING DEFERRAL OR WAIVER OF COURT FEES AND COSTS AND NOTICE REGARDING CONSENT JUDGMENT		07/02/2003
15	MOTION FOR TRIAL DE NOVO AND TRIAL BY JURY		07/07/2003
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18	SEPARATE(SIC) ANSWER OF DEFENDANTS MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, MEDLIN, PETERSON, AND RAMSEY		07/09/2003
19	PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT		07/23/2003
20	MOTION TO COMPEL COMPLIANCE WITH TRANSFER OF RECORD REQUIREMENTS		07/23/2003
21	MOTION TO AMMEND(SIC) COMPLAINT		07/23/2003
22	MOTION TO COMPEL SEPARATION OF PARTIES AND COUNSEL		07/28/2003
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* OUT OF DATE ORDER

ITEM NO.	DESCRIPTION	HEARING DATE	FILE DATE
26	RESPONSE TO MOTION FOR DEFAULT		07/28/2003
27	REPLY TO MOTION FOR TRIAL DE NOVO AND TRIAL BY JURY		08/01/2003
28	SEPARATE RESPONSE TO DENY MOTION FOR DEFAULT JUDGMENT BY DEFENDANTS MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, MEDLIN, PETERSON, AND RAMSEY		08/05/2003
29	SEPARATE MOTION AND ORDER TO DIRECT PLAINTIFF'S COMMUNICATIONS TO DEFENDANTS' COUNSEL		08/05/2003
30	REPLY TO MOTION FOR DISCOVERY AND ADMISSION OF NEW AND ADDITIONAL EVIDENCE		08/06/2003
31	REQUEST FOR COURT REPORTER FOR PREHEARING CONFERENCE SET FOR SEPTEMBER 22, 2003		08/13/2003
32	MOTION TO COMPEL WITHDRAWAL OF COUNSEL AND REQUEST FOR SANCTIONS		08/15/2003
33	REPLY TO MOTION FOR DEFAULT JUDGMENT OF DEFENDANTS MARICOPA COUNTY, MEDLIN, PETERSON, AND RAMSEY		08/15/2003
34	RESPONSE TO SEPARATE MOTION TO DIRECT PLAINTIFF'S COMMUNICATIONS TO DEFENDANT'S COUNSEL		08/20/2003
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38	STATEMENT OF PLEADINGS AND REQUEST FOR CLARIFICATION ON FILING INSTRUCTIONS		09/25/2003
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40	MINUTE ENTRY ORDER ENTERED BY COURT	10/08/2003	10/09/2003

* OUT OF DATE ORDER

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41	NOTICE OF APPEAL		11/07/2003
42	AFFIDAVIT IN LIEU OF BOND		11/10/2003
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