

1 Scott M. McNair  
(Plaintiff, Pro Per)

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

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

6 SCOTT M. MCNAIR  
7 Plaintiff

8 V.

9 MARICOPA COUNTY DEPARTMENT  
10 OF TRANSPORTAION, ET AL,  
11 Defendants

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

**MOTION TO AMMEND COMPLAINT**

12  
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 does  
15 hereby request leniency from the Court for the form and content of this pleading.

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

19 **II. MEMORANDUM**

20 McNair does hereby seek to amend the Complaint, adding the following defendants:

- 21 • Fulton Brock, Maricopa County Supervisor, District 1
- 22 • Don Stapley, Maricopa County Supervisor, District 2
- 23 • Andrew Kunasek, Maricopa County Supervisor, District 3
- 24 • Max Wilson, Maricopa County Supervisor, District 4
- 25 • Mary Rose Wilcox, Maricopa County Supervisor, District 5

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<sup>1</sup> JRAD refers to the Arizona Rules of Procedure for **J**udicial **R**eview of **A**dministrative **D**ecisions.

1 Each of the above (Brock, Stapley, Kunasek, Wilson, and Wilcox, herein referred to as “the  
2 Supervisors”) were named and noticed as parties of record in the proceedings before the State of Arizona  
3 Personnel Board (No. 02-56), and therefore in accordance with A.R.S. § 12-908, they are automatically  
4 made defendants in this action. The statute reads:

5 12-908. Parties

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

9 Failure to list and serve the Supervisors as defendants was an oversight on the part of the Plaintiff (a  
10 non-attorney). The Maricopa County Department of Transportation (MCDOT), which is an agency within  
11 Maricopa County, governed by the Supervisors, has already been listed and duly served in this matter.

12 Since Mr. Daniel Brenden of the Office of Counsel for Maricopa County has already accepted service  
13 and filed a response on behalf MCDOT (and defendants Maricopa County, Medlin, Peterson, and Ramsey),  
14 and since Brenden was appointed by the Supervisors as counsel for such, the Supervisors therefore have  
15 knowledge of the action and are in no way prejudiced by being added as a defendants at this point.

16 The inclusion of the Supervisors as defendants is merely a technical matter, is required by statute, and is  
17 intended to insure that justice is properly served.

18 The Plaintiff also requests that the Court waive any formal requirement for the Supervisors to be  
19 individually served with summons and complaint, as such would be served upon the same counsel now  
20 defending them in this action, and therefore be redundant and costly.

21 The Court is granted discretion in its waiving the formal requirement of service of summons in these  
22 proceedings. Such is stated in J.R.A.D. 13:

23 **RULE 13. WAIVER OF FORMAL REQUIREMENTS**

24 Upon a showing of exceptional circumstances or lack of training in the law of a party not represented  
25 by counsel...the court may modify the procedural requirements of these rules in order to insure that a  
26 fair and just determination of the administrative appeal on its merits can be made.

27 Since the Supervisors are automatically defendants in these proceedings as defined by A.R.S. § 12-908,  
and already aware of this action, the waiver of the “*procedural*” requirement of having each of them served  
with summons is well within the Court’s discretion, and doing so will “*insure that a fair and just*

1 *determination of the administrative appeal on its merits can be made”.*

2 The Court should also recognize that a similar motion to amend, adding the Maricopa County (County)  
3 as a defendant was granted by this same Court on February 18, 2004. Prior to granting that motion to  
4 amend, the Plaintiff (a non-attorney) discussed with the Court the issue of whether the “County” or the  
5 “Individual Supervisors” should be made defendants. The Court refused to decide this issue asserting that it  
6 “could not give you [Plaintiff] legal advice.” Therefore, to insure that justice is served on all parties, and to  
7 prevent the erroneous exclusion of rightful parties, the Supervisors must therefore be named and included as  
8 defendants.

### 9 III. POINTS OF AUTHORITY

10 This motion is being made as allowed by the *Rules Of Procedure For Judicial Review Of Administrative*  
11 *Decisions* and the *Arizona Rules of Civil Procedure*.

12 The action currently before the Court was filed pursuant to Title 12, Chapter 7, Article 6 of the Arizona  
13 Revised Statutes. Accordingly, it is therefore subject to the Rules of Civil Procedure as stated in the  
14 following statute:

15 12-914. Rules of civil procedure  
16 Where applicable, the rules of civil procedure in superior courts, ... shall apply to all  
17 proceedings except as otherwise provided in this article.

18 Additionally, JRAD 1.(b) specifies:

#### 19 RULE 1. SCOPE OF RULES

20 (b) Except to the extent inconsistent with these rules, the Arizona Rules of  
21 Civil Procedure and the Local Rules of Practice for the superior court in the  
22 county in which an administrative appeal is filed shall apply to proceedings  
held pursuant to title 12, chapter 7, article 6, A.R.S.

23 Under A.R.C.P. <sup>2</sup> Rule 15(a), “*leave to amend shall be freely given*”. See also, *MacCollum v. Perkinson*,  
24 185 Ariz. 179, 913 P.2d 1047 (App.1996). Since memorandums have not yet been submitted, there is no  
25 prejudice to the Defendants in amendment at this time.

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<sup>2</sup> ACRD refers to *Arizona Rules of Civil Procedure*.

1 **IV. CONCLUSION**

2 Since the Supervisors were listed as defendants in the original case before the Board, they are therefore  
3 automatically defendants/parties in this action. Having already been made aware of this action, and in that  
4 the current counsel for the County and other defendants is the same that will represent them, they are in no  
5 way prejudiced by being added at this time.

6 The Court is therefore compelled to grant this Second Motion to Amend in order to insure that justice  
7 will be properly served upon **all** parties.

8  
9  
10  
11 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of MARCH 2004.

12  
13 By \_\_\_\_\_

14 Scott M. McNair

15 Plaintiff (Pro Per)

1 FILED and this 10<sup>th</sup> day of MARCH 2004

2  
3 By \_\_\_\_\_

4 Scott M. McNair, Plaintiff Pro Per

5  
6 ORIGINAL of the foregoing FILED with:

7 Clerk of the Court  
8 Superior Court of Arizona, Maricopa County  
9 201 West Jefferson Street  
Phoenix, Arizona 85003

10 COPY of the foregoing HAND DELIVERED to:

11 Honorable Michael D. Jones  
12 Maricopa County Superior Court  
13 201 West Jefferson  
Phoenix, Arizona 85003

14 COPIES of the foregoing MAILED to Defendants:

15 Sunberg & Mousel  
16 Attn: Craig Mousel  
17 934 West McDowell Road  
18 Phoenix, Arizona 85007  
(Counsel for Defendant, The State of Arizona Personnel Board)

19 Office of the Maricopa County Attorney  
20 Attn: Dan Brenden  
21 222 North Central Avenue, Suite 1100  
22 Phoenix, Arizona 85004  
(Counsel for Defendants: Maricopa County, Maricopa County Department of Transportation,  
23 Medlin, Peterson, Ramsey, Brock, Stapley, Kunasek, Wilson, and Wilcox)  
24  
25  
26  
27