

1 WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY
2 (FIRM STATE BAR NO. 00032000)

3 MARK C. FAULL
CHIEF DEPUTY
4 301 WEST JEFFERSON STREET, SUITE 800
PHOENIX, ARIZONA 85003
5 TELEPHONE: (602) 506-3800
(STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7
8 IN THE MATTER OF:

R-13-0026

9 PETITION TO AMEND RULE
42(f)(1)(D)(ii)(dd), OF THE ARIZONA
10 RULES OF CIVIL PROCEDURE

MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENT ON PETITION TO
AMEND RULE 42(F)(1)(D)(II)(DD), ARIZ. R.
CIV. P. THE ARIZONA RULES OF CIVIL
PROCEDURE

11
12 The Maricopa County Attorney's Office hereby comments on the Petition to Amend
Rule 42(f)(1)(D)(ii)(dd), Ariz. R. Civ. P. of the Arizona Rules of Civil Procedure.

13 Respectfully submitted this 16th day of May, 2013.

14 WILLIAM G. MONTGOMERY
15 MARICOPA COUNTY ATTORNEY

16 BY: 

17 Mark C. Faull
18 Chief Deputy
19
20
21

1 Although the Petition makes a good point, i.e., that a party should be entitled to a
2 change of Judge even if the Judge has already set a matter for hearing on an *ex parte* basis,
3 this seems to be an issue that is best addressed through appellate action in individual cases.
4 It is unclear how often this issue would arise.

5 Current Rule 42(D)(ii)(cc) seems to apply to the situation that the Petitioner
6 described. In Petitioner's cited case, the decision setting the matter did not seem to be a
7 contested hearing, and it's not clear that the judge was correct in characterizing the setting
8 of a hearing for a Temporary Restraining Order (TRO) as the "commencement of the trial."
9 Nor did there appear to be a voluntary relinquishment of rights, i.e., a waiver by any party,
10 when the Judge set the hearing on an *ex parte* basis in the situation presented.

11 If there's ultimately support for this rule change, the County Attorney suggests an
12 alternative choice of language within Rule 42, i.e., "Setting a hearing for a TRO or
13 injunctive relief on an *ex parte* basis does not constitute the commencement of a trial."

14 Respectfully submitted this 16th of May, 2013.

15 WILLIAM G. MONTGOMERY
16 MARICOPA COUNTY ATTORNEY

17 BY: 

18 Mark C. Faull
19 Chief Deputy
20
21