Arizona Chapter, AAML
American Academy of Matrimonial Lawyers

IN THE SUPREME COURT

STATE OF ARIZONA

In the matter of: **PETITION TO AMEND VARIOUS RULES OF PROCEDURE RELATED TO THE PEREMPTORY CHANGE OF JUDGE**	Supreme Court No. R-21-0006 **COMMENT OF THE ARIZONA CHAPTER OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS (AAML) IN OPPOSITION TO PROPOSED RULE CHANGE TO RULE 6, ARIZONA RULES OF FAMILY LAW PROCEDURE**

Pursuant to Rule 28, Ariz. R. Sup. Ct., the Arizona Chapter of the American Academy of Matrimonial Lawyers (AAML) respectfully submits the following comment in opposition to Petition R-21-0006 filed by the Committee of Presiding Judges ("Committee"), and specifically in opposition to the deletion of Rule 6, Arizona Rules of Family Law Procedure, titled "Change of Judge as a Matter of Right".

I. HISTORY OF PEREMPTORY RIGHT TO CHANGE OF JUDGE

A. Statutes/Cases

1. 1913.[1] Since 1913 the Arizona Legislature in A.R.S. § 12-409 has guaranteed litigants the right to one change of judge so long as the party files an affidavit alleging one of five grounds for removal. The grounds for removal include that:

> . . . the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the judge he cannot obtain a fair and impartial trial.

A.R.S. § 12-409(B)(5). Another statute, A.R.S. § 12-410, gives parties immunity from contempt proceedings for "filing or presenting the affidavit provided for by § 12-409, or any motion founded thereon."

2. 1950s. In 1955 the Arizona Supreme Court addressed the importance of a party's right to a fair and impartial trial before a fair and impartial judge in *Marsin v. Udall*, 78 Ariz. 309, 279 P.2d 721 (1955):

> The right to a fair and impartial trial before a fair and impartial judge is a **valuable substantive right** originating in the common law and recognized by statute in both criminal and civil cases. Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this right. Courts cannot enact substantive law. A court is limited to passing rules which prescribe procedure for exercising the right. **Any rule of court that operates to lessen or eliminate the right is of no legal force. It has even been held by the Supreme Court of the United States that under some**

[1] Prior to the codification of the notice of right to change judge in 1913, this right existed in common law. Brush Wellman, Inc. v. Lee, 196 Ariz. 344 (App. 2000); Hordyk v. Farley, 94 Ariz. 189 (1963).

> **circumstances a procedure that had such effect offended the due process clause of the Federal constitution.** *Turney v. State of Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed 749, 50 A.L.R. 1243.

78 Ariz. at 312, 279 P.2d at 723 (emphasis added).

3. 1960s. Even before the digital age brought easier access to court records, the statute's wording led to tarnished judicial reputations owing to affidavits alleging the party had "cause to believe" a judge's bias would prevent fair rulings. A.R.S. § 12-409(B)(5). Compounding this was the plain language of the statute that does not allow the court to disprove allegations against it, even if the judge "might feel the affidavit is filed to harass the court." *Itasca State Bank v. Superior Court in and for Cochise County*, 8 Ariz. App. 279, 445 P.2d 555 (1968). A judge can do "no further function but to transfer the case to another judge" once a party files the affidavit. *Id.; See also, Murray v. Thomas,* 80 Ariz. 378, 380, 298 P.2d 795, 797 (1956).

4. 1970s. The Arizona Supreme Court fixed this problem in the 1970s when it enacted two rules now codified as Rules 42.1 and 42.2 of the Arizona Rules of Civil Procedure (ARCP) and Rules 6 and 6.1 of the Arizona Rules of Family Law Procedure (ARFLP).[2] The first of these Rules (Rule 42.1, ARCP, and Rule 6, ARFLP) gives each party the right to change a judge once *without* filing an affidavit alleging bias. The Rules protect the judges from parties' affidavits in the public domain asserting grounds to believe that the judge is biased, prejudiced or otherwise unfit.

---

[2] While the 2017 civil rule restyling set forth the two different procedures in two rules, there had always been two different procedures in Rule 42 since adoption of the notice of change of judge procedure. The 1971 State Bar note to Rule 42(d) noted: *"This section is new. With part 1 of this rule covering change of judge as a matter of right, it is no longer appropriate for the affidavit itself to accomplish disqualification. When change of judge as a matter of right is no longer available to a litigant, actual disqualification must be asserted and proved. This may be done late in the proceedings if necessary*. Hendrickson v Superior Court, 85 Ariz. 10, 330 P.2d 507 (1958) and Conkling v. Crosby, 29 Ariz. 60, 239 P. 506 (1925)."

The second of these Rules (Rule 42.2 ARCP and Rule 6.1 ARFLP) allows parties to strike a judge for cause by filing the affidavit required in A.R.S. § 12-409, except that the affidavit is subject to proof. *See Ariz. Rule Civ.P.* 42.2(e)(2) stating that the "presiding judge may hold a hearing to determine the issues raised in the affidavit"; Rule 6.1(d)(2), ARFLP (same). This protects the judiciary by greatly reducing the number of claims alleging judicial bias and subjects the remaining claims of bias to proof. The Arizona Supreme Court determined that these Rules did not impermissibly interfere with the rights given by the legislature in A.R.S. § 12-409 and instead "merely codified these holdings [cited above] eliminating the fiction of bias and prejudice and making the change automatic on request, without the necessity of any affidavit." *Hofstra v. Mahoney*, 108 Ariz. 498, 499, 502 P.2d 1317, 1318 (1972); *Del Castillo v. Wells*, 22 Ariz. App. 41, 43, 523 P.2d 92, 94 (1974).

5. <u>1980s to Present</u>. The peremptory right to change of judge under the criminal rule was extended to municipal courts in 1983 and analyzed in *State v. City Court of City of Tucson*, 150 Ariz. 99, 722 P.2d 267 (1986). In that case the Tucson City Prosecutor had a policy that all prosecutors in the office would notice one City Magistrate. Chief Justice Holohan, dissenting only on the facts of the case, gave the history of the peremptory challenge and dismissed the argument with regard to the potential misuse of the Rule with the following:

> It has been recognized that the use of the peremptory challenge to disqualify a judge could be misused for such purposes as obtaining a continuance without any real belief that the judge was biased or prejudiced. *Sam v. State*, 33 Ariz. 383, 265 P. 609 (1928). Despite the recognition of some abuse in the use of the disqualification rule, **this court has nevertheless for many years adhered to the proposition that it is better to uphold the right of the peremptory challenge of a judge than**

become involved in some technical examination of the basis of the challenge.

150 Ariz. at 104, 722 P.2d at 272 (Emphasis added).

B. What History Has Taught Us

The history of the peremptory right to change of judge has taught us many valuable lessons that are equally applicable today and justify keeping the current notice provision intact. These include:

- There is a statutory right to change of judge for cause under A.R.S. § 12-409. Even if the peremptory right were repealed, the statutory right for cause remains. And, if the statutory right were the only right to change of judge, the dirty laundry of the judiciary would be exposed to full public view.
- Repealing Arizona's change of judge rule does not eliminate the right to change judges, it simply eliminates the safeguards. Arizona's constitution, like the federal constitution, created three branches or departments of government and "no one of such departments shall exercise the powers properly belonging to either of the others." Ariz. Const. Art. III. The legislature's power to declare law is exclusive – as is the Court's power to "apply the law." *State v. Rios*, 225 Ariz. 292, 298, ¶ 19 (App. 2010). Thus, the current proposal to repeal Rule 6, ARFLP, would not repeal the statute. But, it would repeal the protections the Rule gives the judiciary, attorneys and parties.
- These Rules came after 60 years of experience with Arizona's change of judge statute and have undergone another 48 years of refinement. The proposed elimination of the Rule discards a century of experience.
- The Arizona Supreme Court has recently placed an increased emphasis on the public's "access to justice." This has manifested itself in many ways, including the rewording of procedural and substantive rules to

increase lay usage and understanding, encouragement of *pro bono* services by lawyers, advertising rule changes, licensure and examination of Legal Paraprofessionals, ABS (Alternative Business Solutions), and educational degrees in Master of Legal Services. The peremptory right to change of judge fits perfectly into this emphasis, while elimination of this right runs completely counter to the present trend and actually inhibits litigants access to justice.

- Implicit and explicit bias is real. Many people have never had experience with the criminal or civil legal system. But everyone has had experience in a family. Everyone who has ever lived in a family grows up with a whole host of life experiences that shape their thinking and attitudes about mothers, fathers, husbands, wives, children, siblings, extended family, partners, grandchildren, finances, household rules, drugs, domestic violence, living circumstances, moving, etc., etc. Some judges are single, some judges are married, some are divorced, some are remarried, some have children, some have no children, some are in blended families with children and step-children, some have children grown and emancipated, and there are many other family arrangements. Judicial officers, like all others, carry their life experiences and pre-dispositions to the bench.
- All family law practitioners have heard at one time or another a judicial officer express such statements from the bench or in private. Here are just a few actual examples:
    - If you make a claim for spousal maintenance in my courtroom I want to make it clear that spousal maintenance is a hand up, not a hand out.

- Counsel, you can put on the evidence if you must, but I will tell you right up front that I will give little or no weight to a child's interview about the wishes of a teenager.
- If a 15 or 16-year-old tells this Court what he wants to do I am very inclined to grant it.
- I am trying to decide the outcome of a dispute over $150,000 and don't want to hear the parents nit-picky arguments about their children.
- How do the children feel about getting vaccinated (pre-COVID)? Let's have them interviewed and I will take that into consideration.

There are many other such examples. Clients and practitioners must retain the right to use this information in certifying that their cases are being decided by a fair and impartial, unbiased, decision-maker.

- At CLE By The Sea in 2019, several justices of the Arizona Supreme Court[3] and others presented on "Yesterday, Today and Tomorrow: Staying Ethical in an Ever-Changing Environment." Among the topics addressed were the implicit and explicit biases of judicial officers and generational bias. Recent case law suggests that there is a presumption that a family court judge is free of prejudice and bias. *Johnson v. Espinoza*, 1 CA-CV 19-0426 FC, 2020 WL 3969244 (Ariz. Ct. App. July 14, 2020); *Meyer v. Petroff*, 1 CA-CV 19-0442 FC, 2020 WL 1813401 (Ariz. Ct. App. April 9, 2020). But the Justices who spoke at that seminar recognized that all, including judicial officers, have implicit and explicit biases. In fact, one author has poignantly noted, *"Judges have the most intractable bias of all: the bias of believing they*

[3] Chief Justice Brutinel and Justices Timmer and Bales.

are without bias."[4] It is naïve to think that judges do not have implicit or explicit biases and litigants/lawyers who practice in front of them must have the right to make sure that the judicial officer is not swayed by such information in the hearing of their case. It is simply a matter of clients being fully informed and having the right to at least once unpick a judicial officer. This can only be accomplished in the family law judicial system by maintaining a peremptory right to change of judge.

II. THE ELIMINATION OF A CHANGE OF JUDGE AS A MATTER OF RIGHT HAS A PARTICULARLY NEGATIVE EFFECT ON FAMILY COURT LITIGANTS.

The proposed rule change eliminating a change of judge as a matter of right will have a negative effect on family law litigants in ways that will not affect other civil or criminal law litigants. The fact that in family law cases the judge not only makes conclusions regarding the law, but is the sole trier of fact, means that family law litigants (like probate and juvenile litigants) are unable to rely on the perceived independence of a jury. This makes it that much more important to a family law litigant that they perceive the judge assigned to their case as fair and impartial.

That people perceive their interaction with justice as right, fair, and appropriate is crucial to the operation of our justice system. The importance of this

[4] Kenneth Cloke, *Mediating Dangerously – The Frontiers of Conflict Resolution* (2001), cited by Baer, M.B., "The Amplification of Bias in Family Law and Its Impact" 32 Journal of the American Academy of Matrimonial Lawyers 305, 330 (2020).

perception to a family law litigant cannot be overstated. No peer-based "cross-section" of the community is deciding the fate of children, support for children or a spouse, or allocating assets and debts. A family law litigant does not have the opportunity to weigh in on choosing the trier of fact as do criminal and civil litigants when a jury is being impaneled. In family law cases it is one person and one person only who will decide your life's fate: the randomly assigned judge. Unlike a jury, made up of community peers, who have been vetted for pre-conceived biases, a family law judge may indeed have, or be perceived to have, personal biases that play themselves out over their tenure in family law. Crucial to a family law litigant's perception that their trier of fact will be fair and unbiased is the ability to change a judge as a matter of right, without having to file a motion for cause. One would think the judiciary would support a family law litigant's right to transfer their case once to another judge, for whatever reason, to ensure that the litigant believes the judicial system process will be fair to them.

The perception that a judge may not be fair and unbiased, whether true or not, can arise for a family law litigant under a number of scenarios. Perhaps the family law attorney they retained has appeals pending against that judge's rulings in other cases. Perhaps they know someone else in the community who had a bad experience with a particular judge. Perhaps they read negative online reviews about the judge. Perhaps their attorney believes the judge actually has a bias in certain types of cases

or does not have the right background for the issues that will be tried in the client's case. Whatever the reason, it is crucial a family law litigant have faith in the judicial system. The right to change a judge once a as a matter of right is central to that faith. The lack of access to a jury may very well mean, if the right to a change of judge is taken away, that some family law litigants will never believe their interaction with the justice system was impartial. Neither does it help family law attorneys assure their clients their interaction with the justice system will be fair if they must advise their client of previous negative experiences with a particular judge (or engage in an internal debate about whether to do so or not), but at the same time advise the client they have no option other than a Rule 6.1 notice for cause, to directly accuse the assigned judge of bias. Such a "no-option" outcome is not supportive of faith in the judicial system, is not based on principles of equality, and is especially harsh to a litigant without the right to a jury.

III. THE CHANGE OF JUDGE AS A MATTER OF RIGHT DOES NOT IMPOSE AN UNDUE BURDEN ON SMALLER COUNTIES.

It has been argued that a reason for eliminating the peremptory change of judge, as of right, is because it imposes a burden on counties and areas that are rural or low-population. This is simply not the case. While it is true that such counties may have fewer judicial officials than larger counties, it has long been accepted that a "visiting judge" from another county may be called upon from time to time to hear cases when there is not a judicial officer available in the local

Superior Court.[5] Pursuant to the Arizona Judicial Branch's website (https://www.azcourts.gov/AZ-Courts/Superior-Court), there are 180 sitting Superior Court judges in Arizona, excluding hearing officers and court commissioners. There are more than ample judges to ensure that a matter is heard even if there are no available judges in the county with jurisdiction over the case.

Moreover, given the recent technological advances that have been necessitated by the COVID-19 pandemic, a "visiting judge" would not necessarily even have to be physically present in another county in order to hear a case there. The "visiting judge" could be in his or her home courtroom while the litigants and witnesses could appear remotely. If a party does not have access to adequate hardware or internet service in order to appear remotely, they could travel to the local courthouse and utilize the technology there in order to participate in the proceedings.

However, even if the peremptory change of judge did create a burden on smaller counties, the benefits to the parties to family law actions of preserving this right far outweigh any potential difficulties. As of the most recent census data available (2010 census), the smallest county in Arizona is Greenlee County, with a population of 8,437 people. The likelihood that litigants and courthouse staff, or even the judges themselves, will personally know each other, or know of each

[5] This procedure is sometimes used in family court when a sitting judge in a particular county is involved in his or her own family law litigation. Other family law litigants should have similar rights to have an impartial judge.

other, increases in smaller communities. It is essential that the parties in areas that are rural or low-population are able to feel that they are receiving unbiased and neutral access to justice. While judges may feel that they can put aside all personal feelings and make determinations regarding the outcome of family law cases on their merits, and may in fact be able to do so, the perception of the litigants may be far different.

It is therefore essential in smaller counties with few judicial officers to ensure that the parties are able to request a change of judge. This is perhaps even more important in these small counties than in larger counties. In order to feel treated fairly by the Arizona justice system, a family law litigant should not be forced into a position where the judge deciding the outcome of their case may have had prior interactions with the parties, or others, that could be perceived as prejudicial. As there are no juries in family law cases, the outcome is in the hands of the judge and the judge alone. The public's confidence in the justice system and its impartiality is more important than any perceived burden on rural courts, especially when the perceived burden is not borne out by fact as is the case when "visiting judges" are taken into account.

IV. ELIMINATION OF THE CHANGE OF JUDGE AS A MATTER OF RIGHT WILL CAUSE BIAS AND PREJUDICE IN CASES REMANDED FROM APPEAL.

> *In the case of an appeal, reversal and a remand for a new trial, it is always possible that the trial judge may subconsciously resent the*

> *lawyer or defendant who got the judgment reversed. The mere possibility of such a thought in the back of a trial judge's mind means that a new judge should be found.*

King v. Super. Ct., 108 Ariz. 492, 493 (1972).

The inherent nature of an appeal highlights the importance of ARFLP 6 in protecting both litigants and the judiciary from bias or the perception of bias. A family law litigant, having just won his or her case before the Court of Appeals, will return on remand in many cases to schedule a new hearing or trial on the issues previously litigated in the trial court. Under ARFLP 6(f), a litigant's right to a change of judge is renewed if (1) the appellate decision requires a new trial or contested hearing, and (2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the action.

Family law is unique in the way it involves each litigant's personal life, causing many litigants to strongly believe that a judge, who has ruled against them on child custody, support, or property issues, is biased against them. Right or wrong, it is undeniable that these litigants feel justified in their belief after winning their case before the Court of Appeals. If these litigants are deprived of their ability to change their judge after remand by the Court of Appeals, the appearance of impropriety and bias against them will cause many to lose faith in the judicial system, believing that their cases will have the same outcome before the same trial court judge.

The importance of the right to a peremptory change of judge upon remand by the Court of Appeals has been recognized numerous times in Arizona. Arizona Civil Rule 42.1 was amended to provide a peremptory right to change of judge after remand for a new trial after a dissent in *State v. Neil* "pointed to the particular importance of permitting the change as a matter of right after an appeal because of the possibility that after entry of such a judgment the judge hearing the first trial could have preconceived notions about the outcome." *Valenzuela v. Brown*, 186 Ariz. 105, 109 (App. 1996) (discussing *Neil*, 102 Ariz. 110 (1967)). The *Valenzuela* Court noted that, after a judge has ruled on the merits of a case, "he has shown unequivocally what he believes the proper outcome of the case to be, even more so, perhaps, than if the case had been tried to a jury. The judgment now having been reversed, the policy reasons for permitting a change of judge as a matter of right on remand are all the more apparent." *Id.*; *see also Smith v. Mitchell*, 214 Ariz. 78, 80-82 (App. 2006).

Recently, the Arizona Court of Appeals has reiterated the importance of the right to a peremptory change of judge upon remand for a new trial. The Court noted that the Rule "hinges on principles of fairness and impartiality." *Coffee v. Ryan-Touhill*, 247 Ariz. 68, 72 ¶ 18 (App. 2019). Trial judges, who have "already tackled the issue, heard the arguments and reached a conclusion" may prejudge an issue on remand. *Id.* The Rule "also guards against the 'possibility of judicial bias' where

trial judges might begrudge the parties who successfully seek review of their rulings." *Id.* In rejecting the argument that a litigant must show the judge is upset with movants who successfully overturn a decision on appeal, the Court of Appeals ruled that "[a]ctual bias is not required. This prophylactic rule is premised on the mere potential for judicial bias, whether subconscious, intuitive or intentional." *Id.* at 73 ¶ 23 (internal citations omitted).

"Even where there is no actual bias, justice must appear fair. In other words, justice must not only be done fairly but ... it must be perceived as having been fairly done." *Kay S. v. Mark S.*, 213 Ariz. 373, 380 ¶ 35 (App. 2006) (internal quotations and citations omitted). After a successful appeal, and particularly in family court, the removal of the peremptory right to a change of judge would unequivocally result in perceived bias, and the appearance of injustice. Due to the intimate nature of family court proceedings, and the high stakes involved in divorce and child custody for many litigants, the right to a peremptory change of judge after remand from the Court of Appeals is necessary to preserve the public's confidence in Arizona's judiciary.

V. THE REMOVAL OF THE CURRENT PROCEDURE FOR TO CHANGE JUDGE IS INCONSISTENT WITH A LITIGANT'S ACCESS TO JUSTICE.

If a litigant or lawyer feels, rightly or wrongly, that a particular judge -- the litigant's *only* trier of fact in family court --- has exhibited bias in similar cases, the

litigant now has but one opportunity to change judge, Rule 6, ARFLP. If the peremptory change of judge procedure is taken away, the same perception of bias still exists, but public confidence in the courts has been reduced. A family court litigant will be left with two options: (1) proceed to hearing with a judge s/he already believes to have a bias; or (2) file a strike for cause, and take on an extraordinary burden of proof.

Moving to strike for cause is an extraordinary remedy that requires the litigant and lawyer to openly and publicly make claims against a sitting judge. The litigant must show by a preponderance of evidence that s/he cannot obtain a fair and impartial trial based on the "bias, prejudice, or interest" of the assigned judge. ARS 12-409B; *In re Aubuchon*, 233 Ariz. 62 (2013), citing *State v. Carver*, 160 Ariz. 167 (1989). The presiding judge will be required to make specific findings either denying or justifying the strike. The sitting judge will be put on trial. Specific allegations supporting the bias must be stated, including reference to specific cases, rulings, or predispositions of the judge. Fault (against the judge) will thereby be introduced into family law proceedings, even though those proceedings are traditionally no-fault, in an effort to reduce strife between the litigants.

If the strike for cause is denied, the litigant is then forced to proceed before the judge s/he believes to be biased and who s/he has attempted to prove was biased. Even if the litigant's perception of bias was made entirely in good faith and with

some justification (justification that falls somewhat short of preponderance), the family case litigant is forced to put on his case solely to that trier of fact. It is difficult to believe that this situation of bringing fault into the family court proceedings will enhance an already skeptical public view of Arizona family courts.

Arizona judges have historically been publicly attacked based on rulings or public perceptions of rulings or hearings.[6] While the cited example involved a civil judge and civil case, public and social media attacks on family court judges have been particularly harsh. In one case, a disgruntled family court litigant posted dozens of "Remove Judge Hannah" posters all over the city and surrounding the Southeast Court facility. Rule 6, ARFLP, has historically allowed a member of the public who read online or news reports about a particular judge to quietly file a Notice of Change of Judge, without making explicit claims of fault and without bringing on more publicity. Without the Rule 6 Change of Judge as a Matter of Right, that same litigant will be forced to file a notice for cause and make a public outcry of bias (presumably by calling attention to the social media statements and websites), thus bringing even more attention to the attacks on a particular judge.

---

[6] https://removejudgebrodman.com/?fbclid=IwAR29txx0dQT_hEw4MTG0glBKnIO0SxOBUIO1AHQuIfflcIKJbpwNWPlJlqU

As outlined in the first Section of this Comment, judicial bias is real, and public perception of judicial bias is real. This proposed change to a litigant's ability to make one change of judge for right, without citing a reason, will tell the public that in a family law proceeding, they must ignore any feeling that their case will be heard in an impartial way, or come out fighting in order to preserve a feeling of fairness in the proceedings. In family court, a significant portion of litigants are ready and willing to argue fault in order to preserve the fairness they deserve. The many litigants who will not file a change of judge for cause will be forced to have their cases heard by a judge they feel is unfairly biased, and will forever feel that their outcome was tainted by an unfair family court system.

VI. DATA SHOWS THAT MAINTAINING THE CHANGE OF JUDGE AS A MATTER OF RIGHT WILL NOT CAUSE ANY UNDUE ADMINISTRATIVE BURDENS, CHALLENGES, OR DELAYS IN FAMILY COURT.

Data requested from Maricopa County Superior Court Family Court Administration shows that in fiscal year 2019, the last full year when the notice of change of judge for right was available, the notice was filed in approximately 1.1% of those Maricopa County family cases.[7] Of approximately 34,000 new pre-decree cases filed in 2019, notices were filed 373 times, with a recusal by a judicial officer (not notice-related) occurring in another 108 cases. Therefore, notices are clearly not

[7] Research data dated 4/16/21 from Brian Beldsoe, Family Department Administrator/Director Conciliation Services of the Maricopa County Superior Court.

overused or misused in family court cases and these statistics do not support a basis for eliminating the peremptory challenge.

VII. CONCLUSION

Judicial officers who are justifiably concerned with judicial economy and administrative procedures have proposed this significant rule change. But hundreds, if not thousands, of practicing attorneys, including dozens of family law attorneys, as well as potentially thousands of family law litigants, oppose the loss of this right. Statistics directly from family court do not support an argument that the change of judge for right has been unduly burdensome or misused in family court proceedings. No statistics were cited in the Petition for Rule Change in support of the allegation that *"challenges posed by peremptory change of judge rules cannot be overstated,"* because in fact statistics show the opposite. If family court time frames, calendar control, and case processing were actually negatively affected by the use of the change of judge for right in family cases, those statistics would have been readily available and provided in support of the Petition.

Several sitting judges in Pima County have filed a Comment in opposition to the change, not as a matter of policy but as a matter of law, and on that basis alone, the Rule change should be denied. The Arizona Chapter of the American Academy of Matrimonial Lawyers (AAML) respectfully requests that the policy behind this proposed change also be addressed, and that the Supreme Court recognize that

absent substantial evidence of actual prejudice to the family court system, the abolishment of the basic right of one notice of change of judge for right is a denial of access to justice for litigants. The pending request for this rule change should be denied.

RESPECTFULLY SUBMITTED this 27th day of April, 2021.

Arizona Chapter, American Academy of Matrimonial Lawyers (AAML)

/s/ *Steven Ellsworth*
Steven Ellsworth
Fellow, AAML
President, Arizona Chapter, AAML

/s/ *Steven H. Everts*
Steven H. Everts
Fellow, AAML

/s/ *Jennifer A. Manzi*
Jennifer A. Manzi
Fellow, AAML

/s/ *Keith Berkshire*
Keith Berkshire
Fellow, AAML

/s/ *Annette T. Burns*
Annette T. Burns
Fellow, AAML

/s/ *Angela K. Hallier*
Angela Hallier
Fellow, AAML