



Paul J. McGoldrick  
State Committee Chair  
paulmcgoldrick@smbattorneys.com

May 3, 2021

Honorable Robert M. Brutinel  
Chief Justice  
Arizona Supreme Court  
1501 West Washington Street, #411  
Phoenix, Arizona 85007

Re: Proposed Amendments RE: Peremptory Change of Judge  
Petition R-21-0006

Dear Chief Justice Brutinel:

The Arizona Chapter of the American College of Trial Lawyers strongly opposes the proposal to eliminate a party's longstanding right to change a judge in litigated cases. The proposed rule changes have elicited strong and unanimous negative reaction from our members.

The petition suggests that because litigants in federal and some other state courts must show cause for removing a judge that Arizona state courts should eliminate this right in criminal, civil, family, juvenile, justice, traffic and boating cases and eliminate Ethical Rule 8.4(g). The petition also suggests that because some lawyers – likely a small minority of the bar – abuse the rules - that peremptory changes should be eliminated altogether. From a public policy standpoint and from a public confidence standpoint, that position is not supportable.

ARS §12-409 addresses the right for a change of judge in civil matters. This is a substantive right and we question how the proposed rule changes impact this statutory right. This right has been recognized in family law cases (*Hofstra v. Mahoney*, 108 Ariz. 498 (1972)); probate cases (*In re Sears' Estate*, 54 Ariz. 52 (1939) and juvenile cases (*Anonymous v Superior Court*, 14 Ariz. App 503 (1971)). Should the rules be eliminated, the court system could very well see an increase in statutory requests to change judges and an increase in judicial resources to address these requests.

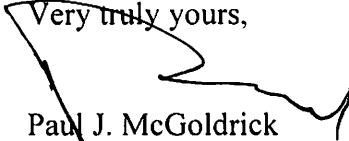
The authors of the proposal to eliminate peremptory judicial challenges have provided a thoughtful analysis of a perceived problem, but the

REPLY TO:  
Shorall McGoldrick  
Brinkmann  
1232 E. Missouri Ave  
Phoenix, AZ 85014-2912  
T: (602) 230-5429

NATIONAL OFFICE  
1300 Dove St.  
Suite 150  
Newport Beach, CA 92660  
t: 949.752.1801  
f: 949.752.1674  
www.actl.com



occasional misuse of peremptory judicial challenges cannot justify the prohibition of peremptory challenges altogether.

Very truly yours,  
  
Paul J. McGoldrick  
Chair, State Committee

### **About the American College of Trial Lawyers**

The American College of Trial Lawyers is composed of preeminent members of the trial bar from the United States and Canada and is recognized as the leading trial lawyer's organization in both countries. Membership is limited to not more than 1 percent of lawyers licensed to practice in Arizona. Founded in 1950, the College is an invitation only fellowship. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism, and collegiality. The College is dedicated to maintaining and seeking to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. Fellows are trial lawyers. The fellowship is comprised of lawyers who represent plaintiffs and defendants in civil matters along with prosecutors and defense counsel in criminal matters.

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