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ARIZONA SUPREME COURT

In the matter of:

PETITION TO AMEND RULES 10.2, 17.4,)	
32.10(a), 33.10(a), and 35.4, RULES OF)	Supreme Court
CRIMINAL PROCEDURE; RULE 42.1,)	No. 2021- 0006
RULES OF CIVIL PROCEDURE FOR)	
THE SUPERIOR COURTS; RULE 6,)	
RULES OF FAMILY LAW PROCEDURE;)	Reply
RULE 2(B) RULES OF PROCEDURE)	
FOR THE JUVENILE COURT; RULES 1)	
AND 9(c), RULES OF PROCEDURE FOR)	
EVICITION ACTIONS; RULE 133(d))	
JUSTICE COURT RULES OF CIVIL)	
PROCEDURE; RULE 7, RULES OF)	
COURT PROCEDURE FOR CIVIL)	
TRAFFIC AND CIVIL BOATING)	
VIOLATIONS; AND ETHICAL RULE)	
8.4(g) OF RULE 42, RULES OF THE)	
SUPREME COURT)	
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court, the Supreme Court Committee of Presiding Judges respectfully files this Reply to the Comments

received in this matter. The Appendix A¹ attached hereto shows modifications to Petitioner’s original proposal in response to the Comments received.

A. Response to Comment Filed by Judge Sakall, et als.

The Comment filed by Judge Sakall, et al. goes to great lengths to tie together the change of judge “for cause” statute, ARS § 12-409, and Rule 42.1, the not-for-cause rule, which Petitioner seeks to remove. Nevertheless, the Comment fails to explain away the plain language and history of Rules 42.1 and 42.2, which support this Court’s authority to abrogate the not-for-cause change of rules targeted by this Petition.

In 1972, the supreme court adopted both the “not for cause” and “for cause” change of judge rules as Rule 42(f)(1)&(2). Before it was restyled in 2017, Rule 45(f)(2) clearly stated that it is the “for cause” portion of the rule that implements the statute:

RCivPro 42(f)

* * *

(2). *Proceedings based on cause.*

(A) Grounds. Grounds for proceedings based upon cause are stated in A.R.S. § 12-409 and *proceedings under that statute* shall be governed by this rule. [emphasis added]

Rule 42(f)(1) makes no mention of the statute. The current ARFLAP Rules 6 and 6.1 are similar. Rule 6.1 provides,

¹ Petitioner has added to Appendix A an amendment to Rule 1 of the Rules of Procedure for Eviction Actions, which was inadvertently omitted from the original Petition. The caption has been amended accordingly.

6.1. Change of Judge for Cause

(a) *Grounds*. A party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. § 12-409.

ARFLAP Rule 6, the “change of judge as a matter of right” rule, does not mention the statute. *See also*, Rule 2(A)&(B), Rules of Procedure for the Juvenile Court.

The not-for-cause rule process developed, not from the statute, but from local court practices that permitted litigants to request a change of judge without stating any reasons on the record. This was viewed as a face-saving mechanism for the judge that also allowed the noticing lawyer to avoid antagonizing the judge to some degree. The local practices were described in Am. Buyers Life Ins. Co. v. Superior Court In & For Maricopa County, 329 P.2d 1100, 1102–03 (1958):

In the history of the state we have never known a judge who was not zealous of interested parties' right to have a judgment rendered by one whom is believed to be fair and impartial. We also know there is a genuine reluctance on the part of attorneys to file affidavits of prejudice. Consequently, the tendency is, except under exceptional circumstances, for judges to recognize informal requests for disqualification. This is a wholesome practice when not abused and is conducive to good relationships between the bench and bar. It should not be used to gain an advantage not contemplated by the spirit and purpose of the statute. We do not wish to be understood as suggesting that these informal requests should be honored. That is matter for court and counsel to decide. In the event a change of judge is requested and allowed without requiring the statutory affidavit, the record should clearly reflect such request and allowance, thus avoiding subsequent dispute concerning the matter.

The not-for-cause notice has been described as "a challenge which is *given as a matter of grace under the Rules* and is to be distinguished from a disqualification of a judge based upon cause" and as a "*rule-given right* to peremptorily change one judge." Hickox v. Superior Court, 505 P.2d 1086, 1089 (Az Ct. App., Div. 1 1973)[emphasis added]. *See also*, Brush Wellman, Inc. v. Lee, 996 P.2d 1248, 1251 ¶ 9 (App. Div. 2, 2000), "Rule 42(f)(1), *in contrast to Rule 42(f)(2)* (change of judge for cause), recognizes the peremptory right to a change of judge, eliminating the previously required affidavit of bias and prejudice" [emphasis added]; and Taliaferro v. Taliaferro, 921 P.2d 21, 22 (1996),

Before Rule 42(f) was amended to allow a peremptory change of judge as of right, the same peremptory challenge 'was accomplished by an affidavit of bias and prejudice which was a mere form and not intended or required to be true.' . . . Yet, such affidavits were also used as true challenges for cause. . . . Soon, the distinction between a peremptory challenge to a judge and a challenge for cause became blurred (citations omitted).


The rule petition that restyled the civil rules, R-16-0010, sensibly bifurcated Rule 42(f) into Rules 42.1 and 42.2. The petition stated that it was restyling but not making substantive changes to that part of Rule 42(f) that is now Rule 42.2 (for cause). However, the Restyling Task Force stated that it was proposing substantive changes, which this Court subsequently adopted, to that part of Rule 42(f) that is now Rule 42.1 (not-for-cause), in part because the Task Force believed "such changes are long overdue, as the ambiguities and inconsistencies in the current rule

have spawned confusion and disputes since they were adopted." R-16-0010 Appendix C, at p. 32. If, as Judge Sakall, Comment argues, Rule 42.1 implements the statute, then the Court would not have had authority to impose these additional limitations on the substantive right granted by § 12-409.

The 1972 State Bar Committee Comment to Rule 42(f) indicated that subsection (f)(1), which is now 42.1, derived from case law, not from the statute. The common law is not immutable, *see for example*, Adams v. Dion, 509 P.2d 201, 203 (1973):

The somewhat specious argument against our repeal of the rule is referred to by defendant's attorney who cites *Ross v. Bumstead*, 65 Ariz. 61, 173 P.2d 765 (1946) for the proposition that this is a common law rule which Arizona adopted by A.R.S. s 1—201 and

‘As a corollary of that premise it follows that the common-law rule, until changed by statute, is the rule this court must follow.’ 65 Ariz. at 64, 173 P.2d at 768.

This ‘corollary’, however, has been breached before. For example, the doctrine of parental immunity came to us from the common law. We did not, however, wait for the legislature to abrogate it when we felt that it had outlived its usefulness, and in  *Streenz v. Streenz*, 106 Ariz. 86, 471 P.2d 282 (1970) we altered it.

Indeed the not-for-cause rules have outlived their usefulness, in light of the administrative burdens they generate, and it is time for Arizona to join the majority of states and the federal courts that have no such rules.

B. Other Comments

With the exception of the Comment filed by Judge Sakall, et al, the Comments all raise familiar policy issues that the Court will need to weigh against the administrative burdens described in the Petition. Many of the Comments illustrate how the bar has come to rely on the rules for judge shopping, which is in no way a substantive right granted by ARS § 12-409.

A few Comments suggested the Petition lacked supporting information and data. To illustrate the administrative burden a notice of change of judge can have on a court, Petitioners solicited from among their own ranks descriptions of what these notices can mean. We received the following responses:

1. Bringing in a visiting judge is a hardship as a courtroom is taken out. Most rural counties do not have a courtroom available for a visiting judge to come utilize. That means a sitting judge either works in chambers or takes a vacation. This is not an effective use of a judge's time with the backlog of trials during the pandemic. (Mohave County)
2. In one judge courts, the notice effectively gives an attorney a veto over the voters' choice at the last election. (Gila County)
3. "Culture" is a broad term but, generally speaking, the people of Santa Cruz County have a culture that is distinct from those residing in other counties. The same likely is true of each of the smaller counties in the state. After I moved here in 2003 it took me several years before I really began to understand the culture. Until then, I felt like an outsider, and was kind of lost. I likely would have the same experience if I moved to Navajo, Graham, or Gila.

By living and working in our respective counties we gain an understanding of the local people who come before us, enabling us to make better decisions about what happens to them. Visiting judges will do their best, but they are at a disadvantage because they don't have the same grounding in the local

culture. Just as venue rules exist, in part, to have local persons serve as jurors, local judges should do the same whenever possible.

Further, we run for election. Many elections are contested. The voters choose us. Although judges are not part of representational government, the voters are given the right and responsibility to elect their local judges to preside over matters in their courts. They lose that right when one lawyer can file a peremptory challenge that requires a visiting judge from another county to preside over their case. (Santa Cruz County)

4. In small counties, it is not uncommon for a judge to have to recuse herself/himself due to a conflict which is in no way related to a peremptory motion for change of judge. I imagine that every small county elected judge practiced law in the county in which they now serve as judge and likely represented the major businesses, prominent people, etc. in the community. We are also likely to be friends with a large number of people as well. In more than a few instances, I have to recuse myself not because of a notice of change of judge, but rather because I previously represented the business or people and/or I (or my family) is close to them. I submit that this is important to understanding the overall burden unique to elected, small county judges because we are already required to recuse ourselves when circumstances so require. The right to a change of judge on the whim of a litigant adds significantly to that burden.

I suspect that all of the presiding judges of smaller counties would concur that when a visiting judge is necessary, it has a massive impact on the operations of our court. If we have a visiting judge it is most often from a neighboring county. Our nearest neighbor is about 45 minutes away. The next closest is about 1 hour and 15 minutes away. The next closest to that is nearly 2 hours away. If I travel for a hearing in another county (or their judge travels to our county), the better part of the day is expended on just one matter. It does not seem difficult to extrapolate the significant impact of travel and time to conduct hearings as a visiting judge.

I would postulate that we need a visiting judge on average 2-4 times per month, and I believe that I am asked by other counties to serve at approximately that same rate. We are often able to have a judge in an adjacent county help, but obviously that necessitates a “pay back” appointment the next time that county needs a visiting judge. I suspect that those who have raised concerns are not at all in a position to truly

comprehend how difficult it is to administer a court properly if you are the only judge (or one of a small number of judges) who are able to handle court business. Usually, it means that after a day of court and travel to and from another county we work into the evening after hours to handle matters that require our attention but that did not get done during normal business hours. (Graham County)

5. For the “Uber Rural” counties the automatic change of judge rule is extremely burdensome.

I have spent over 6 hours on the road to cover one hearing for another small county, and multiple judges from those same counties have done the same for me, numerous times. Routine hearings can now be done over ZOOM, but in my opinion, substantive hearings involving victims, sentencing, etc. require the judge’s presence.

Our nearest neighboring court is over an hour one way; next is over 2.5 hours one way; next is almost 3 hours; then finally Graham is almost 4 hours one way. All of the judges from those neighboring counties have had to cover cases in Apache County due to Rule 10.2.

Finally, the case law analyzing Rule 10.2 provides very little teeth to sanction abuse. In Gila County, years ago, the County Attorney’s Office would 10.2 Judge Duber on every criminal case. When the court tried to push back, it resulted in bar complaints, judicial complaints, etc. In the meantime, the loss of that judge handling criminal cases caused chaos. (Apache County)

Petitioner also requested filing data for the notice of change of judge as of right in limited jurisdiction courts, because Petitioner believes it is the LJ courts that are most impacted by a notice of change of judge. The Administrative Office of the Courts was unable to provide a complete set of data for all courts due to the timing of the roll-out of the new statewide case management system (AJACS). This system is used by all limited jurisdiction courts in the 13 rural counties, many of the smaller

municipal courts in Maricopa County, and the municipal and justice courts in Pima County other than Pima Consolidated Justice Court.

Among the municipal AJACS courts for which data was available, the data showed that eight courts received a total of 108 notices of change of judge as of right between January 2019 and May 2020, when the rules were suspended by Supreme Court Administration Order No. 2020-75. The courts in this group that received the most notices were: Yuma Municipal Court (46 notices); Tucson Municipal Court (42 notices), and Marana Municipal Court (11 notices).

For the justice courts that use AJACS, the data showed that twenty courts received 163 notices over the same time period. The justice courts that received the most notices were: Prescott JP (50 notices); Seligman JP (42 notices); Parker JP (17 notices); and Page JP (13 notices). It should be noted that time did not permit this data to undergo verification, so the actual numbers could be higher or lower.

C. Amended Rules Proposal

Petitioner intends that the amendments in Appendix A replace the Appendix A attached to Petitioner's original petition. Petitioner has made minor changes to the proposed revisions, primarily to eliminate some of the renumbering and has added an amendment to Rule 1 of the Rules of Procedure for Eviction Actions, which was inadvertently omitted from the original Petition.

Wherefore, Petitioner requests the Court adopt the proposed rule amendments in Appendix A.

Respectfully submitted this 27th day of May, 2021.

Supreme Court Committee of Presiding Judges:

By: /S/ _____
Kyle Bryson, Presiding Judge
Pima County

By: /S/ _____
James Conlogue, Presiding Judge
(ret.) Cochise County

By: /S/ _____
Tom Fink, Presiding Judge
Santa Cruz County

By: /S/ _____
Charles W. Gurtler, Presiding Judge
Mohave County

By: /S/ _____
David Haws, Presiding Judge
Yuma County

By: /S/ _____
Robert J. Higgins, Presiding Judge
(ret.) Navajo County

By: /S/ _____
Michael Latham, Presiding Judge
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Stephen F. McCarville
Presiding Judge, Pinal County

By: /S/ _____
John Napper, Presiding Judge
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Michael Peterson, Presiding Judge
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Dan Slayton, Presiding Judge
Coconino County

By: /S/ _____
Monica Stauffer, Presiding Judge
Greenlee County

By: /S/ _____
Joseph Welty, Presiding Judge
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Timothy Wright, Presiding Judge
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APPENDIX A

RULES OF CRIMINAL PROCEDURE

RULE 10.2. CHANGE OF JUDGE AS A MATTER OF RIGHT [RESERVE]

(a) Entitlement.

~~(1) *Generally.* Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.~~

~~(2) *Meaning of "Side."* Each case, including one that is consolidated, is treated as having only two sides.~~

~~(3) *Per Party Limit.* A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.~~

~~(4) *Inapplicability to Certain Proceedings.* A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.~~

(b) Procedure.

~~(1) *Generally.* A party may exercise a right to change of judge by filing a "Notice of Change of Judge" signed by counsel or a self-represented defendant, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal is in the attorney's capacity as an officer of the court.~~

~~(2) *"Improper Purpose."* "Improper purpose" means:~~

~~(A) for the purpose of delay;~~

~~(B) to obtain a severance;~~

~~(C) to interfere with the judge's reasonable case management practices;~~

~~(D) to remove a judge for reasons of race, gender or religious affiliation;~~

~~(E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;~~

~~(F) to obtain a more convenient geographical location; or~~

~~(G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).~~

~~(3) *Further Action by the Judge.* If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.~~

~~(e) **Timing.**~~

~~(1) *Generally.* Except as provided in (e)(2), or extended by local rule, a party must file a notice of change of judge no later than 10 days after any of the following:~~

~~(A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;~~

~~(B) the superior court clerk's filing of a mandate issued by an appellate court; or~~

~~(C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.~~

~~(2) *Exception.* Despite (e)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.~~

~~(d) **Assignment to a New Judge and Effect on Other Defendants.**~~

~~(1) *On Stipulation.* If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed immediately before the assignment of the action to that judge.~~

~~(2) *Absent Stipulation.* If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.~~

~~(3) *Effect on Other Defendants.* If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.~~

~~(e) **Waiver.** A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.~~

~~(f) **Following Remand.** Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.~~

RULE 17.4. PLEA NEGOTIATIONS AND AGREEMENTS

(a) through (f) [no changes]

~~(g) **Change of Judge if Plea Withdrawn.** A defendant who withdraws a plea after a presentence report is submitted may exercise a change of judge as a matter of right under Rule 10.2 if the defendant has not previously exercised that right.~~

RULE 32.10. ASSIGNMENT OF A JUDGE

(a) **Generally.** The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. The provisions of Rules 10.1 ~~and 10.2~~ apply in proceedings for post-conviction relief when the case is assigned to a new judge.

(b) [no changes]

RULE 33.10. ASSIGNMENT OF A JUDGE

(a) **Generally.** The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. The provisions of Rules 10.1 ~~and 10.2~~ apply in proceedings for post-conviction relief when the case is assigned to a new judge.

(b) [no changes]

RULE 35.4. JURY TRIAL; DISQUALIFICATION OF THE CITING JUDGE

(a) and (b) [no changes]

COMMENT

The self-disqualification of the judge required by this ~~rule~~ does not give the contemnor a pre-sentence challenge of the judge under ~~Rule 10.2~~.

RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURTS OF ARIZONA

RULE 42.1. CHANGE OF JUDGE AS A MATTER OF RIGHT [RESERVE]

~~(a) **When Available.** In any action in superior court, except an action in the Tax Court, each side is entitled as a matter of right to a change of one judge. Each action, whether single or consolidated, must be treated as having only two sides. If two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right, but each side must have the right to the same number of such changes. The term “judge” as used in this rule refers to any judge, judge pro tem, or court commissioner. The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge’s designee.~~

~~(b) **Notice Requirements.** A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:~~

~~(1) *Written Notice.* A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 5(c). The notice must not specify grounds for the change of judge, but must contain:~~

~~(A) the name of the judge to be changed;~~

~~(B) a statement that:~~

~~(i) the notice is timely under Rule 42.1(c);~~

~~(ii) no waiver has occurred under Rule 42.1(d); and~~

~~(iii) the party’s side has not been granted a change of a judge as a matter of right previously in the action.~~

~~(2) *Oral Notice.* An oral request for change of judge must include the information required by Rule 42.1(b)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party’s name, and the judge’s disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 42.1(a). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.~~

~~(c) **Time Limits.** A party is precluded from obtaining a change of judge as a matter of right unless it files a timely notice. The following deadlines apply:~~

~~(1) Notice must be filed within 90 days after the party giving notice first appears in the case.~~

~~(2) If an assignment identifies a judge for the first time after the time period set forth in Rule 42.1(c)(1) has expired, or fewer than 10 days before that time period will expire, a notice is timely if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.~~

~~(3) If the right to a change of judge is renewed under Rule 42(e), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under Arizona Rule of Civil Appellate Procedure 24.~~

~~(4) A notice of change of judge is ineffective if filed within 3 days of a scheduled proceeding, unless the parties have received fewer than 5 days' notice of that proceeding or the judge's assignment. The filing of an ineffective notice neither requires a change of judge nor bars the party who filed it from later filing a notice of change of judge that satisfies this rule's requirements.~~

(d) Waiver. A party waives the right to change of a judge assigned to preside over any proceeding in the action, if:

~~(1) the party agrees to the assignment;~~

~~(2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;~~

~~(3) a scheduling, pretrial, trial setting, or similar conference begins;~~

~~(4) a scheduled contested hearing begins; or~~

~~(5) trial begins.~~

(e) Actions Remanded from an Appellate Court. In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:

~~(1) if the appellate decision requires a new trial; and~~

~~(2) the party seeking a change of judge or the side on which the party belongs has not previously exercised its right to a change of judge in the action.~~

(f) Procedures on Notice.

~~(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.~~

~~(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.~~

~~(3) Reassignment.~~

~~(A) On Stipulation. If a notice of change of judge is filed, the parties should inform the court in writing if they have agreed on an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.~~

~~(B) Absent Stipulation. If no judge is agreed on, the presiding judge must promptly reassign the action.~~

RULES OF FAMILY LAW PROCEDURE

RULE 6. CHANGE OF JUDGE AS A MATTER OF RIGHT [RESERVE]

~~(a) Definitions.~~

~~(1) Judge. The term “judge” as used in this rule and Rule 6.1 refers to any judge, judge *pro tem*, or court commissioner.~~

~~(2) Presiding judge. The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.~~

~~(b) Generally. In each action, whether single or consolidated, each party is entitled as a matter of right to a change of judge.~~

~~(c) Notice Requirements. A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:~~

~~(1) Written Notice. A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(b). The notice must contain:~~

~~(A) the name of the judge to be changed;~~

~~(B) a statement that:~~

~~(i) the notice is timely under Rule 6(d);~~

~~(ii) no waiver has occurred under Rule 6(e); and~~

~~(iii) the party has not been granted a change of a judge as a matter of right previously in the action. The notice cannot specify grounds for the change of judge.~~

~~(2) *Oral Notice.* An oral request for change of judge must include the information required by Rule 6(c)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party's name, and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 6(b). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.~~

~~(d) **Time Limits.** A party is precluded from obtaining a change of judge as a matter of right unless the party files a timely notice.~~

~~(1) The notice must be filed 60 or more days before a scheduled contested hearing or trial.~~

~~(2) If a new judge is assigned within 60 days of a scheduled contested hearing or trial, a notice is timely filed as to the newly assigned judge if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.~~

~~(3) If a party has received less than 10 days' notice of a proceeding or the assignment of the judge, the party must file a notice at least 3 days before the proceeding.~~

~~(4) If a party has received less than 5 days' notice of a proceeding or a judge assignment, the party may file a notice of change of judge at any time before the proceeding begins.~~

~~(5) If the right to a change of judge is renewed under Rule 6(f), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under ARCAP 24.~~

~~(e) **Waiver.** A party waives the right to change a judge assigned to preside over any proceeding in the action, if:~~

~~(1) the party agrees to the assignment;~~

~~(2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;~~

~~(3) a resolution management, scheduling, pretrial, or similar conference begins; or~~

~~(4) a scheduled contested hearing or trial begins.~~

~~(f) **Actions Remanded from an Appellate Court.** In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver.~~

~~(1) if 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.~~

~~(g) Procedures on Notice.~~

~~(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the action except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.~~

~~(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.~~

~~(3) Reassignment.~~

~~(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing whether they have agreed on an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.~~

~~(B) *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.~~

RULES OF PROCEDURE FOR THE JUVENILE COURT

RULE 2. CHANGE OF JUDGE OR COMMISSIONER FOR CAUSE

Any reference made to a “judge” shall also mean “commissioner”.

A. Change of Judge ~~for Cause.~~

~~B. Change of Judge Upon Request.~~

~~1. *Grounds.* Any party shall be entitled to request a change of judge as a matter of right.~~

~~2. *Procedure.* A party may exercise his or her right to a change of judge by making a request in open court on the record or by filing a pleading entitled “Notice of Change of Judge” signed by counsel, if any, stating the name of the judge to be changed. A notice of change of judge shall be~~

filed within five (5) days after notice to the requesting party of the assignment of the case to a judge. In the case of a reversal of a judgment or order by an appellate court, a notice of change of judge shall be filed within ten (10) days after the filing of the mandate from an appellate court with the clerk of the court.

~~3. Waiver. A party loses the right to a change of judge upon request when the party participates before that judge in any contested matter or hearing. Such waiver shall apply to all successive petitions or supplemental petitions filed with respect to the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one biological or adoptive parent in common with such minor, and to all proceedings after remand by an appellate court.~~

~~C.B. Duty of Judge.~~ When a notice or an affidavit for change of judge is timely filed, the judge named in the notice or affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent harm to the child before the action can be transferred to another judge.

~~D.C. Remand by Appellate Court.~~ When an action is remanded by an appellate court for a new hearing or proceeding, all rights to change of judge exist as set forth in this rule unless the matter is reassigned to the original judge.

COMMITTEE COMMENT

~~It is the understanding of this committee that consideration is being given to limiting the circumstances under which a party is permitted to file a notice of change of judge to those cases where cause can be shown. If such changes are made to the civil and criminal rules of procedure, this rule should be amended accordingly.~~

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 1. Title and Scope of Rules

These rules shall be known and cited as the Rules of Procedure for Eviction Actions (“RPEA”). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to in these rules as “eviction actions.” For purposes of these rules, there shall be only one form of action known as an “eviction action.” The Arizona Rules of Civil Procedure apply only when incorporated by reference in these rules, except that Rule 80(c) shall apply in all courts and Rules 42.1 and Rule 42.2 shall apply in the superior courts.

RULE 9. MOTIONS

a. Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.

b. Responses and Replies. Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.

c. Motion for Change of Judge for Cause. ~~For purposes of this subsection, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right orally or in writing. The party or side must request a change of judge as a matter of right in the precinct where the lawsuit is pending. The request must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to change of judge, and that the request is timely. A request is timely if it is made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. A party waives a right to a change of judge if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely request for a change of judge as a matter of right is orally requested or filed, the court must transfer the lawsuit to a new judge within the county for further proceedings.~~

If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204, except that any request must be made by the date of the first court appearance and five days' notice is not required.

d. through j. [no changes]

JUSTICE COURT RULES OF CIVIL PROCEDURE

RULE 133. GETTING A TRIAL DATE; TRIAL BY JURY OR TO A JUDGE; CHANGE OF PRECINCT OR JUDGE; DISABILITY OF A JUDGE DURING TRIAL; VERDICT OR DECISION

a. through c. [no changes]

d. Change of judge for cause. ~~For purposes of this section, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right. The party or side must file a notice of change of judge as a matter of right in the precinct where the lawsuit is pending and provide a copy of the notice to the other parties as required by Rule 120. The notice must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to a change of judge, and that the notice is timely. A notice is not timely if it is filed less than sixty (60) days before the trial date, or if it is filed more than ten (10) days after the court provided the parties with notice of the assignment of a new judge for trial. A party waives a right to a change of judge if the judge has conducted a conference in the lawsuit, if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely notice of~~

~~change of judge as a matter of right is filed, the court must transfer the lawsuit to a new judge within the county for further proceedings. If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A). [ARCP 42(f)42(f)(2); see A.R.S. § 22-204]~~

e. and f. [no changes]

RULES OF COURT PROCEDURE FOR CIVIL TRAFFIC AND CIVIL BOATING VIOLATIONS

~~RULE 7. NON-AVAILABILITY OF RIGHT TO NOTICE OF CHANGE OF JUDGE~~

[Reserved]

~~The rules of procedure regarding change of judge as a matter of right shall not apply in civil traffic cases except for cases consolidated with criminal matters pursuant to Rule 14.~~

RULES OF THE SUPREME COURT OF ARIZONA RULE 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

ER 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) through (f) [no changes]

~~(g) file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).~~

~~COURT COMMENT TO EXPERIMENTAL 2001 AMENDMENT TO ER 8.4(G)~~

~~Arizona is one of only a few states that allow by judicial rules a party to notice a change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice. Historically, the reasons for exercising a challenge were not inquired into. Just as peremptory challenges of jurors lead to abuses of race or gender based disqualification, however, the peremptory notice of judge has been abused by some to obtain trial delay.~~

~~The rule was amended in 2001 on an experimental basis to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2. If such abuse is not substantially reduced as a result of the amendments at the conclusion of the one year experiment on June 30, 2002, the Court at that time will abolish the peremptory~~

~~change of judge in most criminal cases as recommended in a proposal by the Arizona Judicial Council. See R-00-0025.~~