



ARIZONA HOUSE OF REPRESENTATIVES

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House: JUD DPA/SE 6-4-0-0

HB 2595: change of judge; grounds; decision.

S/E: change of judge; grounds; decision

Sponsor: Representative Parker, LD 16

Caucus & COW

Overview

Outlines procedures for a change of judge in criminal and civil proceedings.

History

Statute allows either party to a civil action in superior court to file an affidavit alleging grounds that may justify a change of judge. The grounds for a change of judge include:

- 1) The judge was previously engaged as counsel in the action;
- 2) The judge has an interest in the action;
- 3) The judge is related to either party to the action;
- 4) The judge is a material witness in the action; or
- 5) The person has reason to believe they will not receive a fair and impartial trial due to the bias, prejudice or interest of the judge ([A.R.S. § 12-409](#)).

The law places specified limitations on a change of judge. A change of judge can only occur once per proceeding. If the parties agree on a particular judge or county, that judge or county must be selected ([A.R.S. § 12-411](#)).

Provisions

Criminal Proceedings

1. Repeals statute concerning the justification and procedure for a change of judge. (Sec. 2)
2. Allows each side in criminal court one change of judge as a matter of right. (Sec. 3)
3. Specifies criminal cases, including consolidated cases, are treated as having only two sides. (Sec. 3)
4. Authorizes the presiding judge to grant additional changes of judge if two or more parties on a side have hostile interests. (Sec. 3)
5. Outlines the circumstances in which a person is not entitled to a change of judge as a matter of right. (Sec. 3)
6. Enables a party's attorney, or a self-represented defendant, to submit a *Notice of Change of Judge*, provided it includes the specified information. (Sec. 3)
7. Specifies that a *Notice of Change of Judge* that is timely filed prohibits the judge from proceeding in the action except to enter necessary temporary orders before the action can be transferred. (Sec. 3)
8. Outlines the deadlines for filing a change of judge and specifies exceptions. (Sec. 3)

9. Outlines procedure when a change of judge is agreed upon by the parties and specifies that if the court accepts the agreed-upon judge there can be no further changes of judge barring specified circumstances. (Sec. 3, 5)
10. Maintains the court's discretion to select another judge if no judge is agreed upon by both parties. (Sec. 3)
11. Allows a party to exercise a change of judge following an appellate court's remand for a new trial and specifies that an event that is connected to the first trial does not waive this right. (Sec. 3)

Change of Judge for Cause – Criminal Proceedings

12. Outlines the circumstances that justify a *Change of Judge for Cause*. (Sec. 5)
13. Specifies the deadlines for a party to file a *Change of Judge for Cause* and outlines the information required to be included in an affidavit. (Sec. 5)
14. Authorizes a party to make an appropriate motion for appeal after the start of a hearing, to allege prejudice that prevents a fair and impartial trial. (Sec. 5)
15. Specifies that a *Notice of Change of Judge* that is timely filed prohibits the judge from proceeding in the action except to enter necessary temporary orders before the action can be transferred. (Sec. 5)
16. Directs the presiding judge to provide a prompt hearing before a different judge on any timely motion concerning a change of judge for cause. (Sec. 5)
17. States in cases involving multiple defendants where the judge grants a motion for a change of judge, the other defendants are not required to change judges. (Sec. 5)

Civil Proceedings

18. Specifies each side in civil actions in superior court are entitled to a change of judge as a matter of right. (Sec. 5)
19. States civil cases, including consolidated cases, are treated as having only two sides. (Sec. 5)
20. Requires a party to file a written notice or make an oral request on the record for a change of judge and prescribes the procedures for making this request. (Sec. 5)
21. Describes the deadlines for filing a change of judge. (Sec. 5)
22. Outlines the circumstances in which a person is not entitled to change of judge as a matter of right. (Sec. 5).
23. Allows a party to retain their right to a change of judge in actions remanded from an appellate court in specified circumstances. (Sec. 5)
24. Specifies that a *Notice of Change of Judge* that is timely filed prohibits the judge from proceeding in the action except to enter necessary temporary orders to prevent immediate injury, loss or damage from occurring. (Sec. 5)
25. Authorizes the judge to proceed with the action if the court determines that the filing party is not entitled to a change of judge. (Sec. 5)

Change of Judge for Cause – Civil Proceedings

26. Outlines the circumstances that justify a *Change of Judge for Cause*. (Sec. 5)
27. Requires copies be served on the involved parties, the presiding judge, the noticed judge and the court administrator if an affidavit is filed. (Sec. 5)

28. Specifies deadlines involving a *Change of Judge for Cause*. (Sec. 5)
29. States if an affidavit that is timely filed and served:
 - a) Another party may file, within five days, an opposing affidavit or response memorandum meeting specified requirements;
 - b) The presiding judge may hold a hearing to decide the issues based on any affidavits or determine issues raised by affidavits; and
 - c) Specifies the named judge is prohibited from proceeding in the action, except to make temporary orders that are necessary to prevent immediate harm. (Sec. 5)
30. Requires the presiding judge to determine issues based on a preponderance of evidence and must promptly reassign the action if grounds for disqualification are found. (Sec. 5)
31. Allows the judge to proceed with the action if the court determines that the filing party is not entitled to a change of judge. (Sec. 5)

Miscellaneous

32. States a change of judge in tax court can only be granted for cause (Sec. 1)
33. Specifies that a person cannot be punished by a judge or court for filing an affidavit for a change of judge. (Sec. 4)
34. Defines *improper purpose, judge* and *presiding judge*. (Sec. 3, 5)
35. Makes technical changes. (Sec. 1, 4)