

Senate Engrossed House Bill

~~change of judge; grounds; decision.~~
(now: grounds; decision; change of judge)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2595

AN ACT

AMENDING SECTION 12-165, ARIZONA REVISED STATUTES; REPEALING SECTION 12-409, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 12-409; AMENDING SECTION 12-410, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-412, 12-413 AND 12-414; RELATING TO THE COURTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-165, Arizona Revised Statutes, is amended to
3 read:

4 12-165. Venue; change of judge

5 A. All actions involving disputes arising under the jurisdiction of
6 the tax court shall be brought in the superior court in Maricopa county.

7 B. Except for actions that involve disputes about taxes arising
8 under title 42, chapters 11 through 16, an action involving a tax, impost
9 or assessment that is filed in another county shall be transferred to the
10 tax court.

11 C. A change of judge in the tax court shall be granted only for
12 cause as prescribed in section ~~12-409~~ 12-414. If a party to an action
13 described by section 12-163, subsection B, exercises its right to a change
14 of judge, the action shall not be reassigned to the tax court.

15 Sec. 2. Repeal

16 Section ~~12-409~~, Arizona Revised Statutes, is repealed.

17 Sec. 3. Title 12, chapter 4, article 1, Arizona Revised Statutes,
18 is amended by adding a new section 12-409, to read:

19 12-409. Change of judge as a matter of right; criminal
20 proceedings; procedure

21 A. EACH SIDE IN A CRIMINAL CASE IS ENTITLED TO ONE CHANGE OF JUDGE
22 AS A MATTER OF RIGHT. IF TWO OR MORE PARTIES ON A SIDE HAVE ADVERSE OR
23 HOSTILE INTERESTS, THE PRESIDING JUDGE OR THE PRESIDING JUDGE'S DESIGNEE
24 MAY ALLOW ADDITIONAL CHANGES OF JUDGE AS A MATTER OF RIGHT. A CRIMINAL
25 CASE, INCLUDING A CONSOLIDATED CASE, IS TREATED AS ONLY HAVING TWO SIDES.

26 B. A PARTY THAT EXERCISES A CHANGE OF JUDGE AS A MATTER OF RIGHT IS
27 NOT ENTITLED TO ANOTHER CHANGE OF JUDGE AS A MATTER OF RIGHT. A PARTY IS
28 NOT ENTITLED TO A CHANGE OF JUDGE AS A MATTER OF RIGHT IN A CASE THAT IS
29 REMANDED FOR RESENTENCING.

30 C. A PARTY MAY EXERCISE A RIGHT TO CHANGE OF JUDGE BY FILING A
31 DOCUMENT ENTITLED "NOTICE OF CHANGE OF JUDGE" THAT IS SIGNED BY AN
32 ATTORNEY OR A SELF-REPRESENTED DEFENDANT, THAT STATES THE NAME OF THE
33 JUDGE TO BE CHANGED AND INCLUDES AN AVOWAL THAT THE PARTY IS MAKING THE
34 REQUEST IN GOOD FAITH AND NOT FOR AN IMPROPER PURPOSE. AN AVOWAL MADE BY
35 AN ATTORNEY IS IN THE ATTORNEY'S CAPACITY AS AN OFFICER OF THE COURT. FOR
36 THE PURPOSES OF THIS SUBSECTION, "IMPROPER PURPOSE" MEANS ANY OF THE
37 FOLLOWING:

38 1. FOR THE PURPOSE OF DELAY.

39 2. TO OBTAIN A SEVERANCE.

40 3. TO INTERFERE WITH THE JUDGE'S REASONABLE CASE MANAGEMENT
41 PRACTICES.

42 4. TO REMOVE A JUDGE FOR REASONS OF RACE, GENDER OR RELIGIOUS
43 AFFILIATION.

44 5. TO USE THE RULE AGAINST A PARTICULAR JUDGE IN A BLANKET FASHION
45 BY A PROSECUTING AGENCY, DEFENDER GROUP OR LAW FIRM.

1 6. TO OBTAIN A MORE CONVENIENT GEOGRAPHICAL LOCATION.

2 7. TO OBTAIN AN ADVANTAGE OR AVOID A DISADVANTAGE IN CONNECTION
3 WITH A PLEA BARGAIN OR AT SENTENCING, EXCEPT AS ALLOWED BY RULE 17.4(g),
4 ARIZONA RULES OF CRIMINAL PROCEDURE.

5 D. IF A NOTICE OF CHANGE OF JUDGE IS TIMELY FILED, THE JUDGE MAY
6 NOT PROCEED FURTHER IN THE ACTION EXCEPT TO ENTER ANY NECESSARY TEMPORARY
7 ORDERS BEFORE THE ACTION CAN BE TRANSFERRED TO THE PRESIDING JUDGE OR THE
8 PRESIDING JUDGE'S DESIGNEE. IF THE NAMED JUDGE IS NOT THE PRESIDING
9 JUDGE, THAT JUDGE MAY CONTINUE TO PERFORM THE FUNCTIONS OF THE PRESIDING
10 JUDGE.

11 E. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, OR IF
12 EXTENDED BY A LOCAL COURT RULE, A PARTY MUST FILE A CHANGE OF JUDGE NOT
13 LATER THAN TEN DAYS AFTER ANY OF THE FOLLOWING OCCURS:

14 1. THE ARRAIGNMENT IF THE CASE IS ASSIGNED TO A JUDGE AND THE
15 PARTIES ARE GIVEN ACTUAL NOTICE OF THE ASSIGNMENT AT OR BEFORE THE
16 ARRAIGNMENT.

17 2. THE SUPERIOR COURT CLERK'S FILING OF A MANDATE ISSUED BY AN
18 APPELLATE COURT.

19 3. ACTUAL NOTICE TO THE REQUESTING PARTY OF THE ASSIGNMENT OF THE
20 CASE TO A JUDGE IF PARAGRAPH 1 OR 2 OF THIS SUBSECTION DOES NOT APPLY.

21 F. IF A NEW JUDGE IS ASSIGNED TO A CASE LESS THAN TEN DAYS BEFORE
22 TRIAL, INCLUDING THE DATE OF THE ASSIGNMENT, A NOTICE OF CHANGE OF JUDGE
23 MUST BE FILED WITH APPROPRIATE ACTUAL NOTICE TO THE OTHER PARTY OR
24 PARTIES, NOT LATER THAN 5:00 P.M. ON THE NEXT BUSINESS DAY FOLLOWING
25 ACTUAL RECEIPT OF A NOTICE OF THE ASSIGNMENT OR BY THE START OF TRIAL,
26 WHICHEVER OCCURS EARLIER.

27 G. IF A NOTICE OF CHANGE OF JUDGE IS TIMELY FILED, THE NOTICE MAY
28 INFORM THE COURT THAT ALL OF THE PARTIES HAVE AGREED ON A JUDGE WHO IS
29 AVAILABLE AND WILLING TO ACCEPT THE ASSIGNMENT. SUCH AN AGREEMENT MAY BE
30 HONORED AND, IF HONORED, THE AGREEMENT BARS FURTHER CHANGES OF JUDGE AS A
31 MATTER OF RIGHT UNLESS THE AGREED-ON JUDGE LATER BECOMES UNAVAILABLE. IF
32 A JUDGE TO WHOM THE ACTION HAS BEEN ASSIGNED BY AGREEMENT LATER BECOMES
33 UNAVAILABLE BECAUSE OF A CHANGE OF CALENDAR ASSIGNMENT, DEATH, ILLNESS OR
34 OTHER LEGAL INCAPACITY, THE PARTIES MAY ASSERT ANY RIGHTS UNDER THIS
35 SECTION THAT EXISTED IMMEDIATELY BEFORE THE ASSIGNMENT OF THE ACTION TO
36 THAT JUDGE.

37 H. IF A TIMELY NOTICE OF JUDGE HAS BEEN FILED AND NO JUDGE HAS BEEN
38 AGREED ON PURSUANT TO SUBSECTION G OF THIS SECTION, THE PRESIDING JUDGE
39 MUST IMMEDIATELY REASSIGN THE ACTION TO ANOTHER JUDGE.

40 I. A PARTY LOSES THE RIGHT TO A CHANGE OF JUDGE UNDER THIS SECTION
41 IF THE PARTY PARTICIPATES BEFORE THAT JUDGE IN ANY CONTESTED MATTER IN THE
42 CASE, A PROCEEDING UNDER RULE 17, ARIZONA RULES OF CRIMINAL PROCEDURE, OR
43 THE BEGINNING OF TRIAL.

44 J. UNLESS PREVIOUSLY EXERCISED, A PARTY MAY EXERCISE A CHANGE OF
45 JUDGE AS A MATTER OF RIGHT FOLLOWING AN APPELLATE COURT'S REMAND FOR NEW

1 TRIAL AND AN EVENT THAT IS CONNECTED WITH THE FIRST TRIAL DOES NOT
2 CONSTITUTE A WAIVER. A PARTY MAY NOT EXERCISE A CHANGE OF JUDGE AS A
3 MATTER OF RIGHT FOLLOWING A REMAND FOR RESENTENCING.

4 Sec. 4. Section 12-410, Arizona Revised Statutes, is amended to
5 read:

6 12-410. Punishment for contempt for filing affidavit for
7 change of judge prohibited

8 ~~NO~~ A judge or court shall NOT punish for contempt any ~~one~~ PERSON
9 making, filing or presenting the affidavit provided for by section ~~12-409;~~
10 ~~12-414~~ or any motion founded thereon.

11 Sec. 5. Title 12, chapter 4, article 1, Arizona Revised Statutes,
12 is amended by adding sections 12-412, 12-413 and 12-414, to read:

13 12-412. Change of judge for cause; criminal proceedings

14 A. IN A CRIMINAL CASE A PARTY IS ENTITLED TO A CHANGE OF JUDGE IF
15 THE PARTY SHOWS THAT THE ASSIGNED JUDGE'S INTEREST OR PREJUDICE WOULD
16 PREVENT A FAIR AND IMPARTIAL HEARING OR TRIAL.

17 B. A PARTY SEEKING A CHANGE OF JUDGE FOR CAUSE MUST FILE A MOTION
18 NOT LATER THAN TEN DAYS AFTER DISCOVERING THAT GROUNDS EXIST BUT MAY NOT
19 FILE A MOTION AFTER A HEARING OR TRIAL BEGINS. THE MOTION MUST STATE
20 SPECIFIC GROUNDS FOR THE CHANGE OF JUDGE AND BE SUPPORTED BY AN AFFIDAVIT.
21 ALLEGATIONS OF INTEREST OR PREJUDICE THAT PREVENT A FAIR AND IMPARTIAL
22 HEARING OR TRIAL AND THAT ARISE AFTER COMMENCEMENT OF THE HEARING OR TRIAL
23 MAY BE PRESERVED FOR APPEAL BY MAKING AN APPROPRIATE MOTION.

24 C. IF A PARTY FILES A TIMELY MOTION FOR CHANGE OF JUDGE, THE JUDGE
25 MAY NOT PROCEED EXCEPT TO ENTER ANY NECESSARY TEMPORARY ORDERS BEFORE THE
26 ACTION CAN BE TRANSFERRED TO THE PRESIDING JUDGE OR THE PRESIDING JUDGE'S
27 DESIGNEE. IF THE NAMED JUDGE IS THE PRESIDING JUDGE, THE PRESIDING JUDGE
28 MUST ASSIGN THE MOTION TO ANOTHER JUDGE.

29 D. AFTER A PARTY FILES A TIMELY MOTION UNDER THIS SECTION, THE
30 PRESIDING JUDGE MUST PROMPTLY PROVIDE FOR A HEARING ON THE MOTION BEFORE A
31 JUDGE OTHER THAN THE CHALLENGED JUDGE. AFTER HOLDING THE HEARING, THE
32 HEARING JUDGE MUST DECIDE THE ISSUES BY A PREPONDERANCE OF THE EVIDENCE
33 AND ENTER AN ORDER STATING THE FINDINGS AND RULING ON THE MOTION. THE
34 HEARING JUDGE MUST THEN RETURN THE MATTER TO THE PRESIDING JUDGE.

35 E. THE PRESIDING JUDGE MUST PROMPTLY ASSIGN THE ACTION BACK TO THE
36 ORIGINAL JUDGE IF THE MOTION IS DENIED OR MUST MAKE A NEW ASSIGNMENT IF
37 THE MOTION IS GRANTED.

38 F. IF THERE ARE MULTIPLE DEFENDANTS, THE GRANT OF A MOTION FOR
39 CHANGE OF JUDGE FILED BY ONE OR MORE DEFENDANTS DOES NOT REQUIRE A CHANGE
40 OF JUDGE AS TO THE OTHER DEFENDANTS EVEN THOUGH THE CHANGE OF JUDGE MAY
41 RESULT IN SEVERANCE FOR TRIAL PURPOSES.

12-413. Change of judge for cause: civil proceedings:
definitions

A. IN AN APPLICABLE CIVIL ACTION IN SUPERIOR 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 CHANGES.

B. 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 FOLLOWING MANNER:

1. 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), ARIZONA RULES OF CIVIL PROCEDURE. THE NOTICE MAY NOT SPECIFY GROUNDS FOR THE CHANGE OF JUDGE BUT MUST CONTAIN BOTH OF THE FOLLOWING:

(a) THE NAME OF THE JUDGE TO BE CHANGED.

(b) A STATEMENT THAT:

(i) THE NOTICE IS TIMELY UNDER RULE 42.1(c), ARIZONA RULES OF CIVIL PROCEDURE.

(ii) A WAIVER HAS NOT OCCURRED UNDER RULE 42.1(d), ARIZONA RULES OF CIVIL PROCEDURE.

(iii) THE PARTY'S SIDE HAS NOT BEEN GRANTED A CHANGE OF JUDGE AS A MATTER OF RIGHT PREVIOUSLY IN THE ACTION.

2. AN ORAL REQUEST FOR CHANGE OF JUDGE MUST INCLUDE THE INFORMATION REQUIRED BY RULES 42.1(b)(1)(A) AND (B), ARIZONA RULES OF CIVIL PROCEDURE. WHEN MADE, THE REQUEST IS DEEMED AN ORAL NOTICE OF CHANGE OF JUDGE FOR THE PURPOSES OF THIS SECTION. 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 WHO OBTAINS A CHANGE OF JUDGE BASED ON AN ORAL NOTICE IS DEEMED TO HAVE EXERCISED THE PARTY'S RIGHT TO A CHANGE OF JUDGE UNDER RULE 42.1(a), ARIZONA RULES OF CIVIL PROCEDURE. FOR THE PURPOSES OF THIS SECTION, AN ORAL NOTICE IS DEEMED FILED ON THE DATE THAT IT IS MADE ON THE RECORD.

C. A PARTY IS PRECLUDED FROM OBTAINING A CHANGE OF JUDGE AS A MATTER OF RIGHT UNLESS THE PARTY FILES A TIMELY NOTICE. THE FOLLOWING DEADLINES APPLY:

1. NOTICE MUST BE FILED WITHIN NINETY 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), ARIZONA RULES OF CIVIL PROCEDURE, HAS EXPIRED OR FEWER THAN TEN DAYS BEFORE THAT TIME PERIOD WILL EXPIRE, NOTICE IS TIMELY IF THE NOTICE IS FILED WITHIN TEN DAYS AFTER THE PARTY RECEIVES NOTICE OF THE NEW ASSIGNMENT OR WITHIN TEN DAYS AFTER THE NEW JUDGE IS ASSIGNED, WHICHEVER IS LATER.

1 3. IF THE RIGHT TO A CHANGE OF JUDGE IS RENEWED UNDER RULE 42(e),
2 ARIZONA RULES OF CIVIL PROCEDURE, NOTICE IS TIMELY IF THE NOTICE IS FILED
3 WITHIN FIFTEEN DAYS AFTER ISSUANCE OF THE APPELLATE COURT'S MANDATE UNDER
4 RULE 24, ARIZONA RULES OF CIVIL APPELLATE PROCEDURE.

5 4. THE NOTICE IS INEFFECTIVE IF THE NOTICE IS FILED WITHIN THREE
6 DAYS OF A SCHEDULED PROCEEDING UNLESS THE PARTIES HAVE RECEIVED FEWER THAN
7 FIVE DAYS' NOTICE OF THAT PROCEEDING OR THE JUDGE'S ASSIGNMENT. THE
8 FILING OF AN INEFFECTIVE NOTICE DOES NOT REQUIRE A CHANGE OF JUDGE AND
9 DOES NOT BAR THE PARTY WHO FILED IT FROM LATER FILING A NOTICE OF CHANGE
10 OF JUDGE THAT SATISFIES THIS SECTION'S REQUIREMENTS.

11 D. A PARTY WAIVES THE RIGHT TO A CHANGE OF JUDGE WHO IS ASSIGNED TO
12 PRESIDE OVER ANY PROCEEDING IN THE ACTION IF ANY OF THE FOLLOWING APPLIES:

13 1. THE PARTY AGREES TO THE ASSIGNMENT.

14 2. THE JUDGE RULES ON ANY CONTESTED ISSUE OR GRANTS OR DENIES A
15 MOTION TO DISPOSE OF ANY CLAIM OR DEFENSE IF THE PARTY HAD AN OPPORTUNITY
16 TO FILE A NOTICE OF CHANGE OF JUDGE BEFORE THE RULING IS MADE.

17 3. A SCHEDULING, PRETRIAL, TRIAL-SETTING OR SIMILAR CONFERENCE
18 BEGINS.

19 4. A SCHEDULED CONTESTED HEARING BEGINS.

20 5. TRIAL BEGINS.

21 E. IN ACTIONS REMANDED FROM AN APPELLATE COURT, THE RIGHT TO A
22 CHANGE OF JUDGE IS RENEWED AND AN EVENT THAT IS CONNECTED WITH THE FIRST
23 TRIAL DOES NOT CONSTITUTE A WAIVER IF BOTH OF THE FOLLOWING APPLY:

24 1. THE APPELLATE DECISION REQUIRES A NEW TRIAL.

25 2. THE PARTY SEEKING A CHANGE OF JUDGE, OR THE SIDE ON WHICH THE
26 PARTY BELONGS, HAS NOT PREVIOUSLY EXERCISED THE PARTY'S RIGHT TO A CHANGE
27 OF JUDGE IN THE ACTION.

28 F. IF A NOTICE IS TIMELY FILED AND A WAIVER HAS NOT OCCURRED, THE
29 JUDGE NAMED IN THE NOTICE MAY NOT PROCEED FURTHER IN THE ACTION EXCEPT TO
30 MAKE SUCH TEMPORARY ORDERS AS ARE ABSOLUTELY NECESSARY TO PREVENT
31 IMMEDIATE AND IRREPARABLE INJURY, LOSS OR DAMAGE FROM OCCURRING BEFORE THE
32 ACTION CAN BE TRANSFERRED TO ANOTHER JUDGE. IF THE NAMED JUDGE IS THE
33 ONLY JUDGE IN THE COUNTY, THAT JUDGE MAY ALSO REASSIGN THE CASE.

34 G. THE NAMED JUDGE MAY PROCEED WITH THE ACTION IF THE COURT
35 DETERMINES THAT THE PARTY WHO FILED THE NOTICE IS NOT ENTITLED TO A CHANGE
36 OF JUDGE.

37 H. IF A NOTICE OF CHANGE OF JUDGE IS FILED, THE PARTIES SHOULD
38 INFORM THE COURT IN WRITING IF THE PARTIES HAVE AGREED ON AN AVAILABLE
39 JUDGE WHO IS WILLING TO HEAR THE ACTION. AN AGREEMENT OF ALL PARTIES MAY
40 BE HONORED AND, IF HONORED, BARS FURTHER CHANGES OF JUDGE AS A MATTER OF
41 RIGHT UNLESS THE AGREED-ON JUDGE BECOMES UNAVAILABLE. IF A JUDGE TO WHOM
42 AN ACTION IS ASSIGNED BY AGREEMENT LATER BECOMES UNAVAILABLE BECAUSE OF A
43 CHANGE OF CALENDAR ASSIGNMENT, DEATH, ILLNESS OR OTHER INCAPACITY, THE
44 PARTIES MAY ASSERT ANY RIGHTS UNDER THIS SECTION THAT EXISTED IMMEDIATELY

1 BEFORE THE ASSIGNMENT TO THAT JUDGE. IF NO JUDGE IS AGREED ON, THE
2 PRESIDING JUDGE MUST PROMPTLY REASSIGN THE ACTION.

3 I. THIS SECTION APPLIES TO AN ACTION ARISING UNDER THIS TITLE,
4 EXCEPT FOR AN ACTION IN TAX COURT.

5 J. FOR THE PURPOSES OF THIS SECTION:

6 1. "JUDGE" MEANS ANY JUDGE, JUDGE PRO TEMPORE OR COURT
7 COMMISSIONER.

8 2. "PRESIDING JUDGE" MEANS THE PRESIDING SUPERIOR COURT JUDGE IN
9 THE COUNTY WHERE THE ACTION IS PENDING OR THAT JUDGE'S DESIGNEE.

10 12-414. Change of judge for cause: civil proceedings:
11 definitions

12 A. IN AN APPLICABLE CIVIL ACTION IN SUPERIOR COURT, A PARTY SEEKING
13 A CHANGE OF JUDGE FOR CAUSE MUST ESTABLISH GROUNDS BY AFFIDAVIT. A PARTY
14 MAY ALLEGE THE FOLLOWING GROUNDS FOR A CHANGE OF JUDGE:

15 1. THAT THE JUDGE HAS BEEN ENGAGED AS COUNSEL IN THE ACTION BEFORE
16 APPOINTMENT OR ELECTION AS JUDGE.

17 2. THAT THE JUDGE IS OTHERWISE INTERESTED IN THE ACTION.

18 3. THAT THE JUDGE IS OF KIN OR RELATED TO EITHER PARTY TO THE
19 ACTION.

20 4. THAT THE JUDGE IS A MATERIAL WITNESS IN THE ACTION.

21 5. THAT THE PARTY FILING THE AFFIDAVIT HAS CAUSE TO BELIEVE AND
22 DOES BELIEVE THAT ON ACCOUNT OF THE BIAS, PREJUDICE OR INTEREST OF THE
23 JUDGE THE PARTY CANNOT OBTAIN A FAIR AND IMPARTIAL TRIAL.

24 B. THE AFFIDAVIT MUST BE FILED AND COPIES SERVED ON THE PARTIES,
25 THE PRESIDING JUDGE, THE NOTICED JUDGE AND THE COURT ADMINISTRATOR, IF
26 ANY, BY ANY METHOD PROVIDED IN RULE 5(c), ARIZONA RULES OF CIVIL
27 PROCEDURE.

28 C. A PARTY MUST FILE AN AFFIDAVIT SEEKING A CHANGE OF JUDGE FOR
29 CAUSE WITHIN TWENTY DAYS AFTER DISCOVERING THAT GROUNDS EXIST FOR A CHANGE
30 OF JUDGE. CASE EVENTS OR ACTIONS TAKEN BEFORE THAT DISCOVERY DO NOT WAIVE
31 A PARTY'S RIGHT TO A CHANGE OF JUDGE FOR CAUSE.

32 D. IF A PARTY TIMELY FILES AND SERVES AN AFFIDAVIT THAT COMPLIES
33 WITH SUBSECTION A OF THIS SECTION:

34 1. WITHIN FIVE DAYS AFTER THE AFFIDAVIT IS SERVED, ANY OTHER PARTY
35 MAY FILE AN OPPOSING AFFIDAVIT OR A RESPONSIVE MEMORANDUM THAT DOES NOT
36 EXCEED TWO PAGES IN LENGTH. A REPLY MEMORANDUM OR AFFIDAVIT IS NOT
37 PERMITTED UNLESS AUTHORIZED BY THE PRESIDING JUDGE.

38 2. THE PRESIDING JUDGE MAY HOLD A HEARING TO DETERMINE THE ISSUES
39 RAISED IN THE AFFIDAVIT OR MAY DECIDE THE ISSUES BASED ON ANY AFFIDAVITS
40 AND MEMORANDA FILED BY THE PARTIES.

41 3. ON FILING OF THE AFFIDAVIT FOR CAUSE, THE NAMED JUDGE MAY NOT
42 PROCEED FURTHER IN THE ACTION EXCEPT TO MAKE SUCH TEMPORARY ORDERS AS ARE
43 ABSOLUTELY NECESSARY TO PREVENT IMMEDIATE AND IRREPARABLE HARM FROM
44 OCCURRING BEFORE THE REQUEST IS DECIDED AND THE ACTION TRANSFERRED. IF

1 THE NAMED JUDGE IS THE ONLY JUDGE IN THE COUNTY, THAT JUDGE MAY ALSO
2 PERFORM THE FUNCTIONS OF THE PRESIDING JUDGE.

3 4. THE PRESIDING JUDGE MUST DECIDE THE ISSUES BY A PREPONDERANCE OF
4 THE EVIDENCE. THE PRESIDING JUDGE MUST DETERMINE THE SUFFICIENCY OF ANY
5 CAUSE TO BELIEVE AS PRESCRIBED IN SUBSECTION A, PARAGRAPH 5 OF THIS
6 SECTION BY AN OBJECTIVE STANDARD AND NOT BY REFERENCE TO THE AFFIANT'S
7 SUBJECTIVE BELIEF. THE PRESIDING JUDGE MUST PROMPTLY REASSIGN THE ACTION
8 IF GROUNDS FOR DISQUALIFICATION ARE FOUND, AND ANY NEW ASSIGNMENT MUST
9 COMPLY WITH SECTION 12-411.

10 5. THE NAMED JUDGE MAY PROCEED WITH THE ACTION IF THE COURT
11 DETERMINES THAT THE PARTY WHO FILED THE AFFIDAVIT IS NOT ENTITLED TO A
12 CHANGE OF JUDGE.

13 E. THIS SECTION APPLIES TO AN ACTION ARISING UNDER THIS TITLE,
14 INCLUDING A CHANGE OF JUDGE FOR CAUSE IN TAX COURT AS PROVIDED IN SECTION
15 12-165.

16 F. FOR THE PURPOSES OF THIS SECTION:

17 1. "JUDGE" MEANS ANY JUDGE, JUDGE PRO TEMPORE OR COURT
18 COMMISSIONER.

19 2. "PRESIDING JUDGE" MEANS THE PRESIDING SUPERIOR COURT JUDGE IN
20 THE COUNTY WHERE THE ACTION IS PENDING OR THAT JUDGE'S DESIGNEE.