

REFERENCE TITLE: **change of judge; grounds; decision**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1137

Introduced by
Senators Petersen: Barto, Fann, Rogers, Townsend; Representative Blackman

AN ACT

AMENDING SECTION 12-409, ARIZONA REVISED STATUTES; 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 12-409, Arizona Revised Statutes, is amended to
3 read:
4 12-409. Change of judge; grounds; affidavit
5 A. If either party to a civil action in a superior court files an
6 affidavit alleging any of the grounds specified in subsection B **OF THIS**
7 **SECTION**, the judge shall at once transfer the action to another division
8 of the court if there is more than one division, ~~or~~ or shall request a judge
9 of the superior court of another county to preside at the trial of the
10 action.
11 B. **A PARTY MAY ALLEGE ANY OF THE FOLLOWING** grounds ~~which may be~~
12 ~~alleged as provided in subsection A~~ for change of judge ~~are~~:
13 1. That the judge has been engaged as counsel in the action ~~prior~~
14 ~~to~~ **BEFORE** appointment or election as judge.
15 2. That the judge is otherwise interested in the action.
16 3. That the judge is of kin or related to either party to the
17 action.
18 4. That the judge is a material witness in the action.
19 5. That the party filing the affidavit has cause to believe and
20 does believe that on account of the bias, prejudice, ~~or~~ or interest of the
21 judge ~~he~~ **THE PARTY** cannot obtain a fair and impartial trial.
22 C. **AN AFFIDAVIT THAT ALLEGES BIAS AND PREJUDICE SHALL BE GRANTED AS**
23 **A MATTER OF RIGHT, AND THE COURT HAS NO DISCRETION TO DETERMINE THE MERITS**
24 **OF THE AFFIDAVIT.**
25 D. **A PARTY COMPLIES WITH THE AFFIDAVIT REQUIREMENTS OF THIS SECTION**
26 **BY SIGNING AND FILING A DOCUMENT ENTITLED "NOTICE OF CHANGE OF JUDGE".**
27 Sec. 2. Legislative intent
28 The legislature finds:
29 1. The right to a change of judge pursuant to section 12-409,
30 Arizona Revised Statutes, as amended by this act, is a valuable
31 substantive right. The court may not terminate, suspend or abridge this
32 right by administrative order, rule or otherwise.
33 2. The right to a change of judge is limited by section 12-411,
34 subsection A, Arizona Revised Statutes, and any other reasonable court
35 rule that prescribes time limits or the method or form for exercising the
36 right.
37 3. Section 12-409, Arizona Revised Statutes, as amended by this
38 act, does not prevent the court from expanding or enhancing the right to a
39 change of judge.