

ARIZONA SUPREME COURT

CYBER NINJAS, INC.,

Petitioner/Defendant,

THE HONORABLE RANDALL WARNER, Judge of the Superior Court of the State of Arizona, in and for the County of Maricopa,

Respondent,

PHOENIX NEWSPAPERS, INC., an Arizona corporation, and KATHY TULUMELLO; ARIZONA STATE SENATE, a public body of the State of Arizona; KAREN FANN, in her official capacity as President of the Arizona State Senate; WARREN PETERSEN, in his official capacity as the Chairman of the Arizona Senate Committee on the Judiciary; SUSAN ACEVES, in her official capacity as Secretary of the Arizona State Senate;

Real Parties in Interest.

**Arizona Supreme Court
Case No. CV-21-0185-PR**

**Court of Appeals
Division One
Case No. 1 CA-SA 21-0132**

**Maricopa County Superior Court
Case No.: LC2021-00180-001**

(Oral Argument Requested)

**MOTION TO ACCELERATE OR EXPEDITE APPEAL;
REQUEST FOR ORAL ARGUMENT**

Dennis I. Wilenchik, Esq. (SBN # 005350)
John "Jack" D. Wilenchik, Esq. (SBN #029353)
Jordan C. Wolff, (SBN # 034110)
WILENCHIK & BARTNESS, P.C.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85003
(602) 606-2810
admin@wb-law.com
Attorneys for Defendants/Appellants

Pursuant to Rules 25 and 26 of the Rules of the Supreme Court of Arizona, and Rule 29 of the Rules of Civil Appellate Procedure (insofar as applicable), *inter alia*, Petitioner/Defendant respectfully requests that the Court give priority to the Petition for Review pending in this matter, which concerns litigants’ right to a notice of change of judge statewide; and that the Court assign the case for accelerated oral argument.

On July 28, 2021, Petitioner originally filed this case as a “special action of a special action,” which the Court then decided to treat as a Petition for Review. (See Order of this Court filed on July 29, 2021.) Any response to the Petition for Review must be filed by this Friday, August 27th, at which time the Petition is at issue. There are several unique circumstances in this case that warrant giving it a priority, and expediting/accelerating its review:

- a. The petition is a challenge to the Chief Justice’s authority to suspend the substantive right to a notice of change of judge (and to do so via administrative order). The statute concerning peremptory changes of judge provides that the change of judge “shall” occur “at once.” *See* A.R.S. § 12-409(A); *see also* Petition for Review, section II(b), starting on page 4 (explaining that according to a number of decisions from this Court spanning the last century, the substantive right to a peremptory change of judge arises out of A.R.S. § 12-409). Allowing the lower courts to refuse to acknowledge legally-filed requests for a peremptory change of judge therefore amounts to a permanent denial of the Petitioner’s (and other litigants’) statutory right to have one peremptory

change of judge, “at once.” As explained in the Petition, the continuing suspension of the right will also create serious due process problems and lead to future appeals, while could otherwise be avoided by a prompt ruling on this Petition.

- b. Delaying a decision on the Petition will also create a complex problem for the Court’s remedy on appeal, should the Court find that Petitioner’s request for a peremptory change of judge was illegally denied in this case. The trial-court judge continues to hold hearings and to issue orders, even though the case should have been assigned to another division “at once” after Petitioner requested a change of judge on July 9, 2021. If the Court grants relief, then another trial judge will have to review all of the noticed judge’s actions and then decide to reject or affirm them, creating at the minimum a duplication of work and at most a confusing and tumultuous record in this matter. The sooner that the Court hears and rules on this Petition, the less complex that this problem will be.
- c. Finally, giving priority to the Petition for Review, and/or accelerating this appeal, will not cause any genuine prejudice to the other parties. The Petition challenges a statewide judicial administrative order, not the actions of the other parties to this case; and so in that sense, it is not even “against” the other parties. Moreover, a prompt ruling on the Petition is likely to avert the potential administrative headache described above, which benefits everyone.

Petitioner therefore respectfully requests that the Court give priority to this matter, including that it set the matter for an accelerated oral argument (if it chooses to have oral argument), and issue an expedited ruling, either affirming or rejecting Petitioner's right to a peremptory change of judge in this matter.

RESPECTFULLY SUBMITTED August 24, 2021.

WILENCHIK & BARTNESS, P.C.

/s/ John "Jack" D. Wilenchik

Dennis I. Wilenchik, Esq.

John "Jack" D. Wilenchik, Esq.

Jordan C. Wolff, Esq.

The Wilenchik & Bartness Building

2810 North Third Street

Phoenix, Arizona 85004

admin@wb-law.com

Attorneys for Petitioner/Defendant