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3 [REDACTED]  
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5 **Gregg R. Woodnick,** [REDACTED]  
6 *Attorneys for Respondent*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 In Re the Matter of:

Case No.: FC2023-052114

10 **LAURA OWENS,**

**RESPONSE TO NOTICE OF CHANGE  
OF JUDGE FOR CAUSE**

11  
12 Petitioner,

(Assigned to the Hon. Julie Mata)

13 And

(Presiding Judge Hon. Ronda Fisk)

14 **CLAYTON ECHARD,**

15  
16 Respondent.

17  
18 Pursuant to Rule 6.1(d)(1), Respondent Clayton Echard hereby responds to Petitioner  
19 Laura Owens’s “*Notice of Change of Judge for Cause*” filed July 8, 2024 and requests the  
20 Court deny the notice as untimely. Respondent also objects to the salacious allegations  
21 contained in Petitioner’s filings—gross misrepresentations, reckless incendiary comments  
22 impugning the integrity of Judge Mata,<sup>1</sup> and insufficient grounds to find bias on the merits—  
23  
24

25  
26  
27 <sup>1</sup> Counsel comments that Judge Mata was “trying to impress her father – *Look at me Daddy!*  
28 *I’m a real judge now! Just watch me destroy a young woman’s life because the other party  
was on the The Bachelor! Hee hee!”*

1 but the Court need not reach the sufficiency of the grounds because the Notice is irredeemably  
2 time-barred and inappropriately invoked.

### 3 **RESPONSE MEMORANDUM**

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5 Neither A.R.S. § 12-409 nor its implementation via Rule 6.1 permit change of judge  
6 by affidavit of bias and prejudice after final trial.

#### 7 I. History of Common Law Peremptory Challenge

8  
9 Arizona long acknowledged a right to change judges upon filing an affidavit of  
10 reasonable belief of bias or prejudice. *See Stephens v. Stephens*, 17 Ariz. 306 (1915); *Allan v.*  
11 *Allan*, 21 Ariz. 70 (1919). Early territorial statutes codified this right, and it was later  
12 implemented by procedural rules.<sup>2</sup> Although the Supreme Court has refined the procedures,  
13 the right itself is not sourced from the procedural rules.  
14

#### 15 II. Time Limit for Challenge via Affidavit of Bias and Prejudice

16 The relevant language of A.R.S. § 12-409(B)(5) as it exists today is functionally  
17 identical to the 1913 Civil Code provision (which itself gave form to its common law  
18 antecedent and an 1887 territorial code provision): the court must reassign the action to  
19 another judge to “preside at the trial of the action” upon a party filing an affidavit showing  
20 cause to believe and actual belief that she cannot obtain a fair and impartial trial on account  
21 of bias of the judge. *See Stephens* at 309; *Hordyk v. Farley*, 94 Ariz. 189, 191-93 (1963) (“The  
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23  
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26  
27 <sup>2</sup> Civ. Code 1913, § 500 can be traced with functionally identical language through to A.R.S.  
28 § 12-409 via the 1955 reorganization of laws into the Arizona Revised Statutes. *See Brush Wellman, Inc. v. Lee*, 196 Ariz. 344, 346-47, ¶ 7 (2000).

1 language of the statute [in 1915] was in all essentials identical to the language of the statute  
2 today”); *Brush Wellman, Inc.*, supra.

3  
4 The *Hordyk* decision reiterates that change of judge upon a timely filed affidavit works  
5 automatically. *Hordyk* at 193. As to filing the affidavit “in time,” *Hordyk* approves and  
6 expands on *Stephens* and *Allan*, both of which endorse strict limits to filing before final trial.  
7 *Stephens* held that filing one day before trial did not waive the right, but *Allan* held that a  
8 party filing the affidavit after trial had already commenced “did not act with diligence  
9 sufficient to require the trial court to take cognizance of her application.” *Allan* at 72. The  
10 party “**is not permitted to wait until he sees which way the decision is going to go before**  
11 **deciding whether to stay with or try to eliminate the judge who is hearing the matter.**  
12 **Nor is he permitted to wait until the judge has heard evidence on the merits, which will**  
13 **have to be resubmitted if another judge is substituted.”** *West v. Superior Court*, 104 Ariz.  
14  
15 1 (1968) (emphasis added).

16  
17  
18 Petitioner’s reading of *Del Castillo v. Wells* is not supported. Procedural rules  
19 implementing A.R.S. § 12-409, like ARCP 42, did not create a separate and distinct remedy  
20 from the statute; it simply modified the procedures to be followed. *Brush Wellman, Inc. v.*  
21 *Lee*, 196 Ariz. 344, 348, ¶ 13 (App. 2000). *Del Castillo* expressly rejects the notion that  
22 procedural rules implementing § 12-409 create separate and distinct remedies. *Del Castillo*,  
23 22 Ariz.App. 41, 44-45 & fn. 1 (1974). In fact, Rule 6.1 increases the burden by requiring the  
24 affiant to prove the sufficiency of “cause to believe” bias by an objective standard (i.e., the  
25 affidavit itself must have substantive merit). It does not expand statutory rights or create new  
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28

1 ones. The Court must simply reject the Notice as time-barred because it was filed after final  
2 trial and final judgment under Rule 78.

3 **WHEREFORE**, Respondent requests the following:  
4

- 5 1. An Order rejecting the Notice of Change of Judge;
- 6 2. An Order granting leave for Respondent to file a supplemental affidavit of  
7 attorney fees and costs;
- 8 3. Entering any further orders necessary and appropriate considering Rule 8.2(a)  
9 of the Arizona Rules of Professional Conduct.  
10

11 **RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of July 2024.  
12

13 **WOODNICK LAW, PLLC**

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15 \_\_\_\_\_  
16 Gregg R. Woodnick  
17 *Attorneys for Respondent*

18 **ORIGINAL** of the foregoing e-filed  
19 this 11<sup>th</sup> day of July 2024 with:

20 Clerk of the Court  
21 Maricopa County Superior Court

22 **COPY** of the foregoing document  
23 delivered this same day to:

24 The Honorable Julie Mata  
25 Maricopa County Superior Court  
(via ECF)

26 The Honorable Ronda Fisk  
27 Maricopa County Superior Court – Presiding Judge  
28 (via ECF)

1 **COPY** of the foregoing document  
2 emailed this same day to:

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