

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-008265
LC 2021-000180-001

05/16/2022

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

AMERICAN OVERSIGHT

ROOPALI HARDIN DESAI

v.

KAREN FANN, et al.

THOMAS J. BASILE

PHOENIX NEWSPAPERS, INC., ET AL.

v.

ARIZONA STATE SENATE (001), ET AL.

DAVID JEREMY BODNEY
DAVID T HARDY
JOHN DOUGLAS WILENCHIK
KORY A LANGHOFER
KEITH BEAUCHAMP
JORDAN C WOLFF
DAVID ANDREW GAONA
CRAIG CARSON HOFFMAN
DENNIS I WILENCHIK
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE ASTROWSKY
JUDGE KEMP
JUDGE WARNER
REMAND DESK-LCA-CCC

CASE REASSIGNED

Defendant Cyber Ninjas, Inc.'s May 4, 2022 Motion for Change of Judge for Cause in this consolidated case has been referred to this division following recusals by the Civil Presiding Judge and the Associate Civil Presiding Judge. For reasons that follow, the Motion is granted.

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This is Cyber Ninjas' third attempt to change the judge in this case. The first sought to remove Judge Hannah, and it was denied. The second, also directed at Judge Hannah, became moot after LC2021-000180 was consolidated into CV2021-008265 before Judge Kemp. This third motion seeks to remove Judge Kemp.

The basis for the Motion is a comment Judge Kemp made in court that referred to news accounts of statements by Defendant Douglas Logan. Cyber Ninjas argues that Judge Kemp cannot be impartial because he has considered information outside the record, and presumably will consider such information when deciding future issues.

A judge deciding disputed facts may not base their decision on evidence outside the record. *See* Arizona Code of Judicial Conduct Rule 2.9. But there is no prohibition against judges reading news accounts of cases before them. As one court explained: "The fact that a judge reads the news cannot be the only grounds for questioning his or her impartiality, even if reading the news happens to include reading an article about a case he or she is presiding over." *United States v. Carey*, 2018 WL 2128345, at *9 (E.D. Cal. May 9, 2018), *aff'd* 929 F.3d 1092 (9th Cir. 2019).

The evidence does not show Judge Kemp has made a judicial decision based on news accounts, or that he could not or would not make future decisions based solely on the law and the record before him. Yet this case presents a unique circumstance. Many of the news accounts of this case are written and published by one of the parties to it, which is different from almost any other situation in which a judge might read news about a case before them. Solely because of the perception that circumstance creates, a change of judge is warranted. The words of the Court of Appeals in *Kay S. v. Mark S.*, 213 Ariz. 373, 142 P.3d 249 (App. 2006), fit this case:

We do not find any actual bias on the part of [the assigned trial judge]. But "[e]ven where there is no actual bias, justice must appear fair." In other words, "justice must not only be done fairly but . . . it must be perceived as having been fairly done."

213 Ariz. at 380, 142 P.3d at 256, *quoting* *McElhanon v. Hing*, 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986), and *State v. Salazar*, 182 Ariz. 604, 608, 898 P.2d 982, 986 (App. 1995).

IT IS ORDERED granting the Motion.

IT IS FURTHER ORDERED, per the Superior Court's administrative process, that this matter is assigned to the next available judge, Civil Calendar CVJ04, the Honorable Bradley Astrowsky, for all further proceedings.

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IT IS FURTHER ORDERED that any and all hearings set by the previous judge are vacated, to be reset by the new division.

IT IS FURTHER ORDERED that the parties shall jointly file within **10 judicial days** of the date of this minute entry, a notice with the new division listing any outstanding motions (including the file dates), whether they are ripe for resolution, any hearings that need to be reset, and any other pending matters.