

THE MIDNIGHT COLLISION: SEPTEMBER 25-26, 2025

12:00 AM (Sept 26)

STATUTE EFFECTIVE. Revised A.R.S. § 41-1092.07(A) takes legal effect, granting an unconditional preemptory change of Administrative Law Judge (ALJ).

12:13 AM

THE STRIKE. Plaintiff exercises the new statutory right via the OAH portal to replace ALJ Abramsohn.

9:00 AM

THE COLLAPSE. Scheduled hearing begins. ALJ deems the filing an untimely motion. Plaintiff departs.

8:53 AM

THE OBJECTION. Sunland Springs Village HOA files a written objection to the Tribunal.

PLAINTIFF'S EXHIBIT C to Motion for Judgment on the Case Filings

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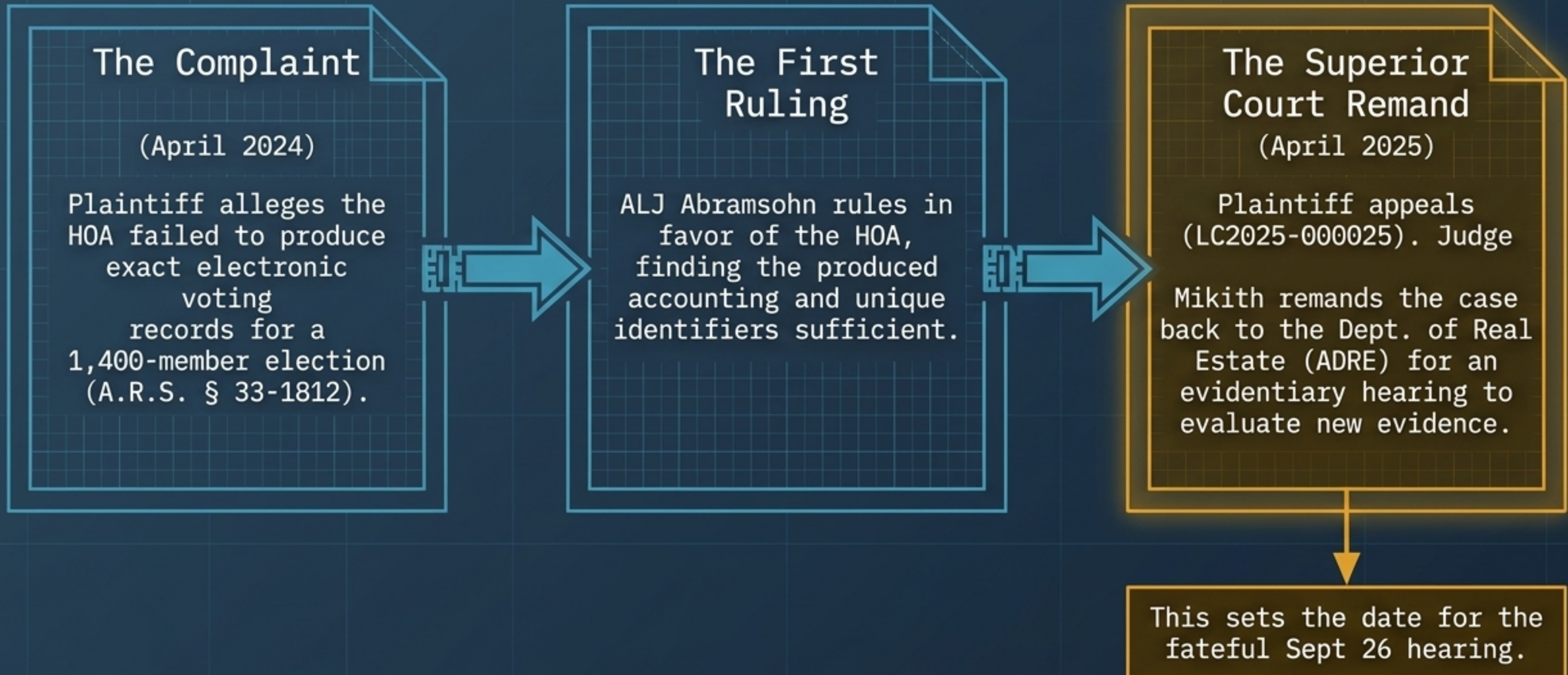
ADMINISTRATIVE ORDER

Revised A.R.S. § 41-1092.07(A) takes legal effect, granting an unconditional preemptory change of Administrative Law Judge (ALJ) to the (ALJ). -- Icedul also renmencas ts mka.precias teomung any mncines: Cf

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The Underlying Dispute: Setting the Stage



The Statutory Trigger

Prior to Sept 26, 2025

Change for Cause

Parties seeking to change an assigned ALJ were required to establish good cause (e.g., bias or prejudice).

Effective Sept 26, 2025

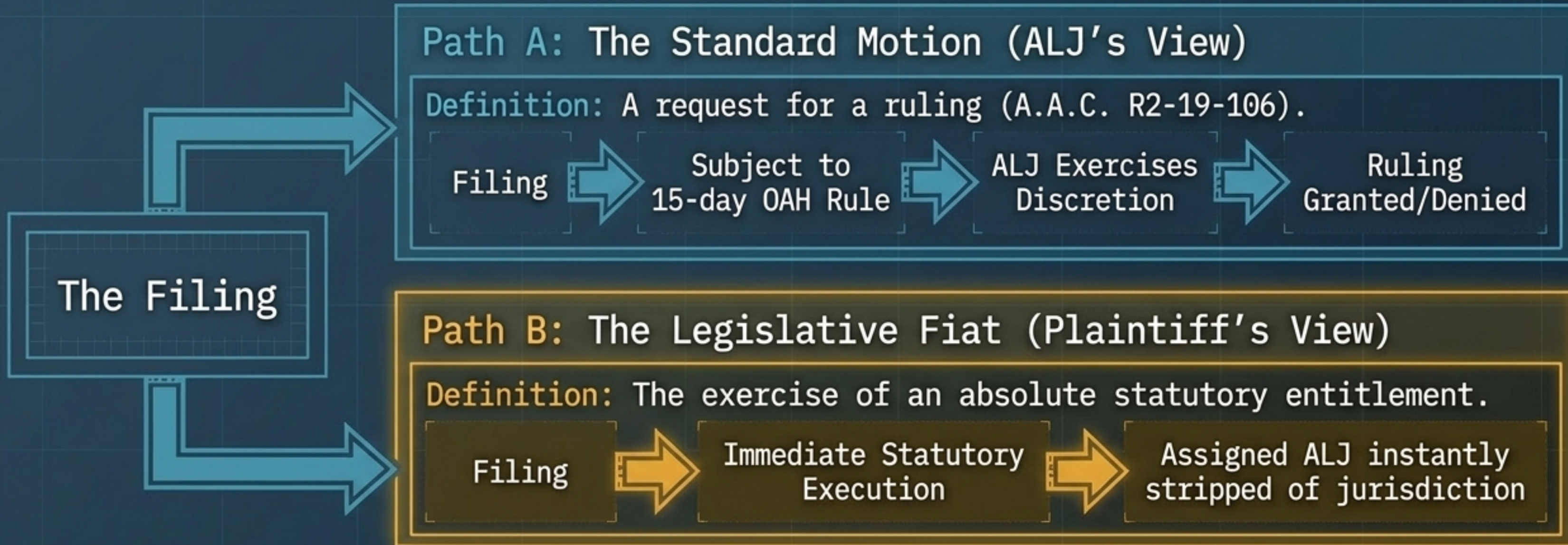
Absolute Right

A party to a contested case or appealable agency action is **entitled to one preemptory change** of administrative law judge.

Citation: A.R.S. § 41-1092.07(A)

Critical Omission: The statute contains no explicitly stated timeliness conditions or limitations on this newly vested substantive right.

Defining the Action: Motion vs. Legislative Fiat



“ When a party... exercises the preemptory right... it becomes a **legislative fiat**; it is **not a 'motion.'** Such fiat is not subject to the discretion or ruling of the then-assigned ALJ. ”

Source: Plaintiff's Complaint, ¶ 22

Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

IT IS FURTHER ORDERED **Petitioner's case is dismissed based on the failure to proceed with the matter.**

The Action

After Plaintiff refused to proceed with ALJ Abramsohn and left the hearing, the ALJ issued an Order Vacating Hearing.

The Ruling

IT IS FURTHER ORDERED **Petitioner's case is dismissed based on the failure to proceed with the matter.**

The Procedural Error (Plaintiff's Claim)

Under A.A.C. R2-19-117, if a party fails to appear, the ALJ may receive evidence from the appearing party or vacate the hearing and return the matter to the agency.

The Catch: **The code explicitly does not grant the ALJ authority to dismiss the case outright for failure to appear.**

Jurisdictional Splintering

Administrative
Hearing

Node 1: LC2025-000025

Judge Mikitish

The Original Appeal. Resulted in the April 2025 remand ordering the ADRE to conduct an evidentiary hearing. Still technically open.

Node 2: CV2025-036466

Judge Blaney

The Original Special Action. Filed Oct 8, 2025. The core vehicle challenging the ALJ's refusal to step down. Currently set for Jan 14, 2026 show cause hearing.

Node 3: LC2025-000397

Judge Mikitish

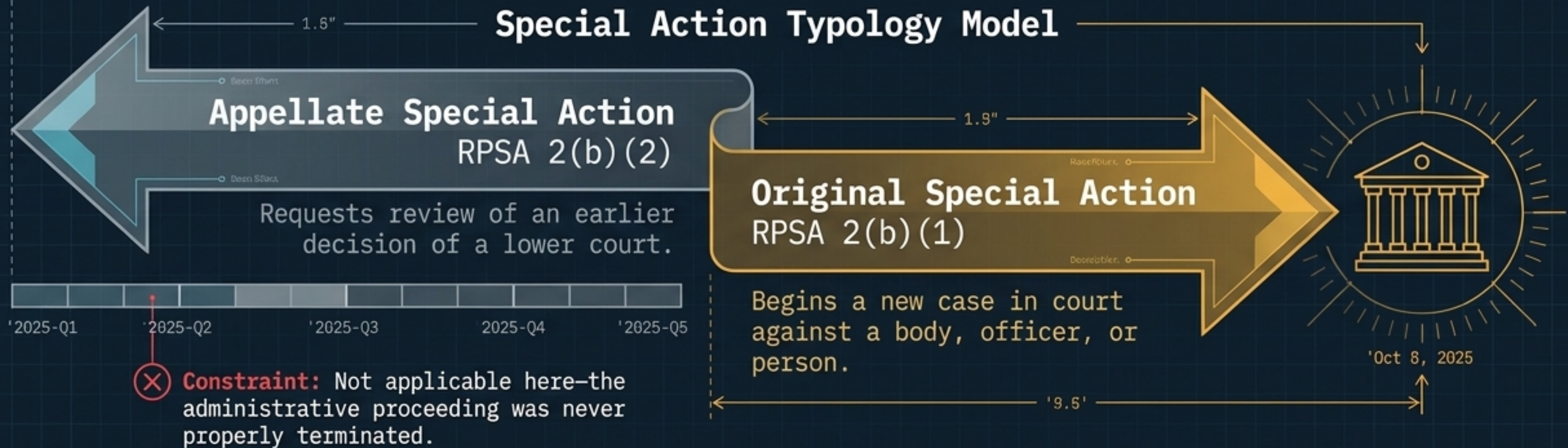
The Second Appeal. Filed Nov 7, 2025. An appeal of the actual dismissal order issued by ALJ Abramsohn.



Action Taken:

Plaintiff moved under Local Rule 3.1 to transfer all cases to a single judge to prevent conflicting rulings.

Choosing the Weapon: The Original Special Action



The Rationale

Plaintiff is **not appealing the merits** of the HOA dispute; they are using an **Original Special Action** (formerly a writ of mandamus/prohibition) to force an officer (the OAH Director) to perform a **non-discretionary duty** (replacing the ALJ) and to **vacate actions** taken **without jurisdiction**.

Mapping the Battlefield: Stakeholder Matrix

[BLANK]	ROLE IN DISPUTE	PLAINTIFF'S GOAL	LITIGATION STATUS
ALJ Abramsohn & Dir. Eigenheer	Judicial Officers	Force removal and nullify Sept 26 actions	Defaulting (Refusing to defend)
Dept. of Real Estate (ADRE)	Administrative Agency	None directly, named statutorily	Nominal (Agrees they have no pecuniary interest)
Sunland Springs HOA	Underlying Respondent	Exclude from this procedural fight	Contested Dismissal (Plaintiff claims dismissed; HOA fighting to stay involved)

The Judicial Default Strategy



The Tactic

On Dec 10, the Attorney General filed a **Limited Response** stating ALJ Abramsohn and Dir. Eigenheer will not defend the action.

This is presumed a deliberate litigation strategy (State v. Webb).

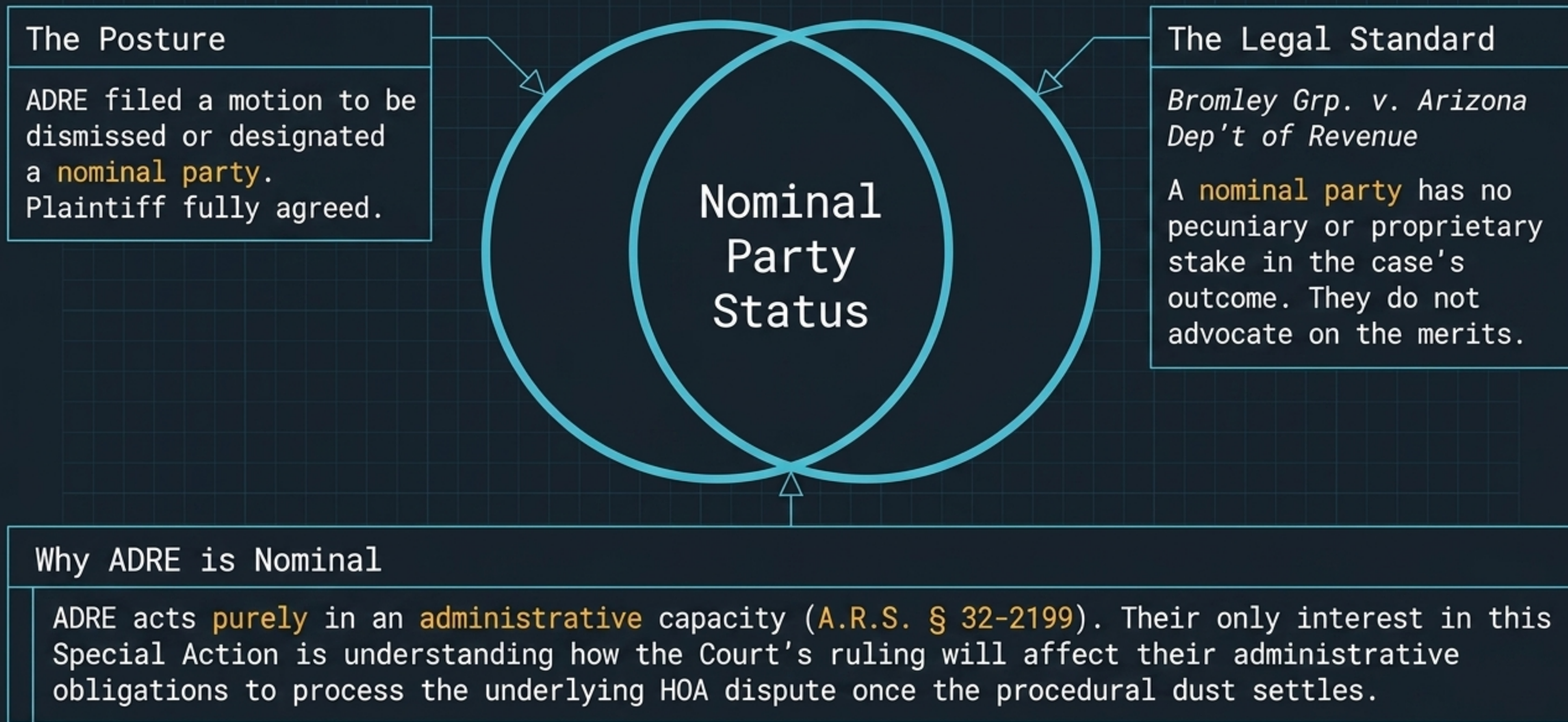
The Consequence

RPSA 7(a)(2) integrates **R.Civ.P. 8(c)(6)**:
An allegation... is admitted if a responsive pleading is required and the allegation is not denied.

Key Admissions by Default:

- ▶ Failed to replace the ALJ (a non-discretionary duty).
- ▶ Proceeded without/in excess of jurisdiction.
- ▶ Made an arbitrary/capricious decision by treating a statutory fiat as a discretionary "motion."

The Point of Agreement: ADRE as a Nominal Party



The Waiver Trap: A Calendar Dispute

service.

I (or the person or entity whom I represent) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the person or entity whom I represent) if an answer or motion under Civil Rule 12 is not served upon you within sixty (60) days after the date shown below.

Dated this 12th day of November 12, 2025.

Signed: *[Signature]*

- ### The Sequence
- **Oct 10:** Plaintiff asks HOA to waive formal service of the Complaint.
 - **Nov 12:** HOA counsel returns the waiver, but makes a "minor modification" to the form, crossing out the original dates and hand-writing **November 12** as the effective date.

The Conflict

A	Plaintiff's View	B	HOA's View
	Under R.Civ.P. 4.1(c)(3), Answer is due 60 days after the request is sent. Deadline: December 9. Plaintiff moves for judgment.		Parties can agree to modified timelines. The waiver is only valid under the terms signed. Deadline: January 12. Motion for Judgment is premature.

Chad M. Gallacher (from IMAGE 1)

Please find attached the signed Waiver of Service Form. I made a **minor modification to the language** of the form to **reflect the date of signing as the effective date for waiver of service and the countdown to file an Answer** as is both appropriate and customary.

The HOA Counter-Offensive: Retroactivity & Timeliness

Rule Against Retroactivity A.R.S. § 1-244

No statute is retroactive unless expressly declared therein. HOA argues the new right cannot be applied to a case that has been ongoing for over a year (*Stuart v. Insurance Co.*).

Civil Procedure ARCP Rule 42.1

Peremptory rights expire if not utilized. Must be filed within **90 days** of appearance, before a substantive ruling is made, and no later than **3 days** before a scheduled proceeding.

OAH Rules

A.A.C. R2-19-106

Administrative motions require a **15-day** filing deadline before a scheduled hearing.

The Bottom Line: HOA argues that even if the right vested at midnight, it instantly expired under all applicable procedural timelines.

Synthesis: The Collision of Statute and Procedure

Collision Graphic

Substantive Statutory Rights

Procedural Architecture

The Competing Truths

Truth 1: A party cannot invoke a right before it legally exists (making 15-day or 3-day advance notice of a Sept 26 statutory change impossible).

Truth 2: Administrative tribunals must enforce timelines and orderly proceedings to prevent surreptitious judge shopping and chaos at the hour of a hearing.

The Conundrum

What happens when the legislature creates an unconditional substantive right that, by its very timing, forces a violation of established procedural timelines?

Does a brand-new statutory "fiat" instantly override the procedural history and established timeline of an active docket?

The Blueprint's Final Implications

Beyond the HOA

This case study represents a stress-test of administrative law execution.

It highlights the friction generated when legislative action (plain meaning text) directly intercepts judicial docket management.

The Statutory Plain Meaning Approach

As noted in Plaintiff's filings referencing Justice Bolick (*State ex rel. Tunkey*):

Courts have "no authority to extend a law beyond the fair and reasonable meaning of its terms."

If the legislature did not write a timeline into *A.R.S. § 41-1092.07(A)*, can the ALJ invent one to save the docket?

“

Procedural rules are the architecture of justice, but statutory rights are the foundation. When the foundation suddenly shifts, the architecture inevitably fractures.