

Legal Briefing: AZNH Revocable Trust v. Abramsohn, et al.

Executive Summary

This briefing document synthesizes the legal proceedings and core themes surrounding the consolidated cases of **AZNH Revocable Trust v. Kay Abramsohn, et al.** (CV2025-036466 and LC2025-000397). The central conflict involves the Plaintiff's attempt to exercise a newly enacted statutory right to a peremptory change of Administrative Law Judge (ALJ) and the subsequent refusal by the Office of Administrative Hearings (OAH) to honor that request. The primary legal question is the applicability and timeliness of **A.R.S. § 41-1092.07(A)**, which became effective on September 26, 2025. The Plaintiff contends that the statute provides an absolute right to replace an ALJ, while the Defendants argue that the request was untimely, constitutes "judge shopping," and cannot be applied retroactively to a case that commenced in early 2024. The matter is currently before the Maricopa County Superior Court following the ALJ's dismissal of the underlying administrative case.

Core Legal Conflict: Peremptory Change of ALJ

The crux of the litigation is the interpretation of the legislatively revised version of **A.R.S. § 41-1092.07(A)**.

The Statutory Change

- **Effective Date:** September 26, 2025, at 12:00 a.m.
- **Provision:** "A party to a contested case or appealable agency action is entitled to one peremptory change of administrative law judge."
- **Plaintiff Interpretation:** The Plaintiff characterizes this right as a "legislative fiat" rather than a motion. They argue it is not subject to the discretion or ruling of the assigned ALJ or the OAH Director.

The Timeline of Exercise

- **September 26, 2025, 12:13 a.m.:** Plaintiff submitted a "Peremptory Change of Administrative Law Judge" via the OAH electronic system, identifying Kay Abramsohn as the ALJ to be removed.
- **September 26, 2025, 9:00 a.m.:** A scheduled rehearing was set to begin before ALJ Abramsohn.
- **The Conflict:** ALJ Abramsohn and the OAH Interim Director, Tammy Eigenheer, determined the request was untimely. ALJ Abramsohn refused to vacate her assignment, offering a "compromise" continuance to December, which the Plaintiff's counsel declined.

Procedural History and Case Status

The litigation involves multiple layers of administrative and judicial review stemming from a dispute with the **Sunland Springs Village Homeowners Association (HOA)** regarding the inspection of electronic ballots under **A.R.S. § 33-1812**.

Administrative Dismissal

Following the Plaintiff's counsel's refusal to proceed with ALJ Abramsohn on September 26, the ALJ issued an **"Order Vacating Hearing"** on October 9, 2025. This order dismissed the Petitioner's case based on a "failure to proceed." The Plaintiff challenges this dismissal, citing **A.A.C. R2-19-117**, which states that if a party fails to appear, the ALJ may proceed with evidence or return the matter to the agency, but does not explicitly authorize dismissal.

Pending Motions in Superior Court

Motion,Description

Motion to Transfer,Plaintiff moves to transfer cases CV2025-036466 and LC2025-000397 to a single judge (Judge Mikitish or Judge Blaney) for judicial economy.

Motion for Judgment on Case Filings,"Plaintiff argues that because Defendants Abramsohn and Eigenheer have not filed a formal Answer and stated they would not defend the action, they have admitted all allegations under Rule 8(c)(6)."

Motion to Dismiss (ADRE),"The Arizona Department of Real Estate (ADRE) seeks dismissal or designation as a ""nominal party,"" asserting it has no pecuniary interest in the outcome."

Key Arguments: Plaintiff (AZNH Revocable Trust)

The Plaintiff's strategy focuses on the mandatory nature of the new statute and procedural errors by the OAH.

- **Mandatory Compliance:** Plaintiff asserts that the right to a peremptory change of judge is absolute and immediate. "Ms. Sullivan exercised her peremptory right of removal within minutes of receiving the right to do so and prior to the scheduled hearing."
- **Jurisdictional Excess:** The Plaintiff claims ALJ Abramsohn "proceeded without, or in excess of, jurisdiction" by conducting a hearing after the peremptory challenge was filed.
- **Arbitrary and Capricious Actions:** The decision to treat a peremptory challenge as a "motion" subject to a timeliness ruling is labeled by the Plaintiff as a legal error and "arbitrary and capricious."

Key Arguments: Defendants

The Defendants, particularly the HOA, challenge the validity of the Plaintiff's statutory exercise.

Timeliness and Retroactivity

- **Non-Retroactivity:** The HOA argues that under **A.R.S. § 1-244**, no statute is retroactive unless expressly declared. Since the case began in April 2024, they contend the new right does not apply.
- **Rule 42.1 Standards:** Defendants cite **Rule 42.1 of the Arizona Rules of Civil Procedure**, arguing a peremptory challenge must be exercised within 90 days of a party's first appearance or three days before a scheduled proceeding. They note the Plaintiff's notice was filed less than nine hours before the hearing.

Judicial Conduct and "Judge Shopping"

- **Prior Rulings:** The HOA asserts the Plaintiff is engaged in "judge shopping" because ALJ Abramsohn had already presided over an evidentiary hearing and ruled against the Plaintiff.
- **Waiver of Right:** Citing *King v. Superior Court*, the HOA argues the right to a peremptory challenge is lost once the parties "have reason to know how the judge feels about any aspect of the merits of the case."

Key Entities and Roles

- **AZNH Revocable Trust (John and Susan Sullivan):** The Plaintiff/Petitioner, seeking enforcement of a peremptory change of ALJ.
- **Kay Abramsohn (ALJ):** The challenged judge who refused to step down and subsequently dismissed the administrative matter.
- **Tammy Eigenheer (Interim Director, OAH):** Upheld the ALJ's decision that the peremptory challenge was untimely.
- **Arizona Department of Real Estate (ADRE):** The agency that oversees HOA disputes. It is viewed as a nominal party by both the Plaintiff and the Attorney General.
- **Sunland Springs Village HOA:** The original Respondent in the administrative dispute, arguing against the retroactive application of the new statute.

Significant Quotes and Evidence

"A party to a contested case or appealable agency action is entitled to one peremptory change of administrative law judge." — **A.R.S. § 41-1092.07(A)**"The Trust attorney attempted to explain that a peremptory right is not a motion subject to her discretion or decision... ALJ Abramsohn stated she would proceed with the hearing and told Trust counsel he could leave if he so wished." — **Plaintiff's Motion for Judgment**"Plaintiff waited surreptitiously in the wings to spring his challenge as soon as the statute became effective but did not give any advance notice... Plaintiff's last-second attempt... amounted to nothing more than judge shopping." — **HOA Response to Motion for Judgment**"If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action." — **Ariz. Admin. Code R2-19-117**