

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-003266

11/29/2018

HON. PAMELA GATES

CLERK OF THE COURT
K. Ballard
Deputy

LAKESWOOD COMMUNITY ASSOCIATION,
THE

QUINTEN T CUPPS

v.

1630 S 36TH L L C, et al.

JOHN L CONDREY
STEPHEN S EDWARDS
16030 S 36TH ST
PHOENIX AZ 85048
MICHAEL R PERRY
JUDGE HEGYI

REASSIGNMENT REQUEST DENIED – CIVIL PRESIDING JUDGE

The court received a pleading captioned “Rule 42.2 Rule 60 Special Action Motion to Remove Judge Hugh Heygi Crimes & Fraud Upon the Court (Biased),” filed November 26, 2018. After reviewing the content of the Mr. Edwards’ Motion, the court considers his request a motion for change of judge for cause under Rule 42.2 of the Arizona Rules of Civil Procedure.

As a preliminary matter, Mr. Edwards’ pleading does not include a certificate of service. Rule 5 of the Arizona Rules of Civil Procedure requires that “[t]he date and manner of service must be noted on the last page of the original of the served document or in a separate certification . . .” This court could reject Mr. Edwards’ pleading as an improper *ex parte* pleading. However, in this instance, the court will simply remind Mr. Edwards of his obligation under Rule 5 and inform him that future pleadings failing to comply with Rule 5 of the Arizona Civil Rules of Procedure will likely be denied as impermissible *ex parte* pleadings. To prevent an *ex parte* communication in this instance, the court ensured Mr. Edwards’ pleading was filed. Moreover,

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the court hereby informs opposing counsel of the existence of Mr. Edwards' pleading and advises counsel that a copy may be obtained by contacting this division's judicial assistant. Although opposing counsel has a right to file a response to a motion for change of judge for cause under Rule 42.2(e)(1), the court does not require a response to rule on the pending motion.

Rule 42.2 of the Arizona Rules of Civil Procedure provides that a party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. §12-409. Arizona Revised Statutes §12-409 states that grounds for change of judge are: 1) the judge has been engaged as counsel in the action prior to the appointment or election as judge; 2) that the judge is otherwise interested in the action; 3) that the judge is of kin or related to either party to the action; 4) that the judge is a material witness in the action; or 5) that the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the judge he cannot obtain a fair and impartial trial. Under Section 409(B)(5), the sufficiency of any "cause to believe" must be determined by an objective standard, not by reference to the affiant's subjective belief.

In this case, Mr. Edwards appears to disagree with Judge Hegyi's rulings. Disagreement with Judge Hegyi's decisions is an impermissible basis to file a motion for change of judge for cause. *See Liteky v. United States*, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1156-57 (1994)(finding that judicial rulings, routine trial administrative efforts, and ordinary admonishments occur in the course of judicial proceedings and fail to stand as a proper basis to request removal of a judge for cause absent a finding of knowledge acquired outside such proceeding or the display of a deep-seated and unequivocal antagonism that would render fair judgment impossible); *State v. Henry*, 189 Ariz. 543, 546, 944 P.2d 57, 61 (1997)(citing *State v. Curry*, 187 Ariz. 623, 631, 931 P.2d 1133, 1141 (App. 1996)). Mr. Edwards' also appears to allege that Judge Hegyi's judicial assistant "lied" about Mr. Edwards' disability when she attempted to summarize her understanding of a document submitted to the court. The court finds no basis to conclude that Judge Hegyi's staff "lied" about Mr. Edwards' disability. Moreover, Mr. Edwards' appears to allege, without support, that Judge Hegyi is somehow conspiring with lawyer Quinten Cupps. A judge is presumed to be free of bias or prejudice. *See State v. Hurley*, 197 Ariz. 400, 405 ¶25, 4 P.3d 455, 459 (App. 2000)(citation omitted); *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987); *State v. Granados*, 235 Ariz. 321, 326, 332 P.3d 68, 73 (App. 2014)(finding that judicial bias or prejudice ordinarily must come from an extrajudicial source and not what the judge has done in the case). Mr. Edwards has failed to satisfy his burden of proof. Ariz. R. Civ. P. 42.2(e).

IT IS ORDERED denying Mr. Edwards' requested relief in the pleading captioned "Rule 42.2 Rule 60 Special Action Motion to Remove Judge Hugh Heygi Crimes & Fraud Upon the Court (Biased)," which the court considered a motion for change of judge for cause under Rule 42.2 of the Arizona Rules of Civil Procedure. The case is returned to Judge Hegyi for further proceedings.