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Colette McNally

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

COLETTE MCNALLY,

Plaintiff/Appellant,

-vs-

SUN LAKES HOMEOWNERS
ASSOCIATION #1, INC., an Arizona
non-profit corporation,

Defendant/Appellees.

COURT OF APPEALS
CASE NO.: 1 CA-CV-15-0744

MARICOPA COUNTY
SUPERIOR COURT
CASE NO. CV2014-009496

**APPELLANT'S MOTION TO
ACCELERATE APPEAL
PURSUANT TO ARCAP 29(a)(2)**

Appellant, Colette McNally respectfully requests that this Court accelerate the appeal in this matter pursuant to ARCAP 29(a)(2).

Ms. McNally is an elected director of the appellee, Sun Lakes Homeowners Association #1, Inc. (the "Association"), whose term ends in February 2017. She filed this appeal seeking reversal of the trial court's

order denying her application for a preliminary injunction to restore her directorship privileges, including her privilege to participate in executive sessions of the Board of Directors. Since her term ends in February 2017, Ms. McNally is requesting acceleration of her appeal because any further delay will render her appeal essentially a moot point.

ARCAP 29 provides a mechanism for accelerating appeals in the Court of Appeals. The pertinent portions of this rule state:

Rule 29. Accelerated Appeals.

(a) Scope. This Rule provides an alternative procedure for accelerated disposition of an appeal by the Court of Appeals. Where they are inconsistent with provisions of other Rules, the provisions of this Rule apply.

(b) Designation. The Court of Appeals may enter an order designating an appeal “accelerated” by stipulation or by motion.

2. By Motion of a Party. After an appeal is at issue as defined in Rule 15(b), a party by motion may request an order that the appeal be accelerated. A party may file an objection within ten days after service of the motion, and other parties may file a response within ten days after service of the objection.

A party may seek relief from the Court of Appeals under appropriate circumstances including upon a demonstration of hardship. See e.g., Perini Land and Dev. Co. v. Pima County, 170 Ariz. 380, 382, 825 P.2d 1, 3 (1992); *Arizona Appellate Handbook*, Volume One - A, Fifth Ed. § 3.12.6;

and see ARCAP 3(a). The Court of Appeals routinely expedites the appeals process especially in injunction cases involving elections and cases where the democratic process is affected because timely resolution of such matters are of the utmost importance. See e.g., Arrett v. Bower, 237 Ariz. 74, 345 P.3d 129 (App. 2015); Parker v. City of Tucson, 233 Ariz. 422, 314 P.3d 100 (App. 2013); Turley v. Bolin, 27 Ariz. App. 345, 554 P.2d 1288 (App. 1976).

As discussed in detail in Ms. McNally's Opening and Reply Briefs, the Association passed a resolution on September 20, 2013 to ban Ms. McNally from all executive session meetings for the balance of her term on the Board unless she presents a court order. App. 42. Pursuant to this resolution, the sanction should have expired over two years ago with her term on March 4, 2014. App. 86. However, once Ms. McNally was reelected for another three-year term running from March 2014 to March 2017, the Association ignored its resolution and arbitrarily extended the sanction throughout Ms. McNally's second term.

At this juncture, the Association has prevented Ms. McNally from participating in executive sessions since September 2013 and has extended the sanction for her second full and final term for 2014 through the current day. Since Ms. McNally is subject to term limits, the Association has

banned Ms. McNally from participating in executive sessions for most of her second term. Currently, Ms. McNally's claim is in danger of becoming a moot point unless her appeal is heard in an accelerated fashion.

As set forth in Ms. McNally's Opening and Reply Briefs, the Association conducts significant business in executive session that she is unable to participate in. The Association discusses financial matters in executive session, reaches consensus on matters in executive session, and Ms. McNally is unable to properly represent her constituents' interests as a result of being precluded from these executive sessions. One of the primary purposes of a preliminary injunction is to protect a party from suffering irreparable harm. Shoen v. Shoen, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). Each executive session that Ms. McNally is forced to miss is another executive session that she cannot get back. As a result, Ms. McNally is suffering irreparable harm and hardship that cannot be abated unless and until her directorship privileges are fully restored.

Ms. McNally has diligently pursued her rights and this appeal. After the Board improperly extended the sanction into Ms. McNally's second term, Ms. McNally filed her Complaint, took discovery, filed a motion for summary judgment, filed a motion for preliminary injunction, took further discovery, and litigated her claim at an evidentiary hearing. After the trial

court denied her application for a preliminary injunction, Ms. McNally filed a Petition for Special Action requesting expedited relief, and; when this Court denied Special Action jurisdiction, Ms. McNally filed a motion pursuant to ARCAP 3 asking this Court to exercise discretion to expedite her appeal. Upon consideration of her motion, this Court denied the motion without prejudice and suggested that Ms. McNally file the within motion once this appeal was at issue (fully briefed). See Court of Appeals Order dated December 17, 2015.

Now that this action is fully briefed and at issue as required by ARCAP 29(a)(2), Ms. McNally respectfully requests that this Court exercise its discretion and grant her motion for an accelerated appeal pursuant to ARCAP 29.

DATED this 29th day of March, 2016.

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with the Court of Appeals and a **COPY**
mailed and e-mailed this 29th day of March 2016, to:

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