

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-002759

09/29/2023

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT  
N. Johnson  
Deputy

PAUL GOUNDER

PAUL GOUNDER  
3655 N 5TH AVE # 205  
PHOENIX AZ 85013

v.

ROYAL RIVIERA H O A

CHARLES D ONOFRY

JUDGE PINEDA  
JUDGE VIOLA

**REASSIGNMENT REQUEST DENIED – CIVIL PRESIDING JUDGE**

The court received Plaintiff's Motion to Recuse filed September 12, 2023. The Motion was forwarded to the Civil Presiding Judge for a determination. The Court determines that Plaintiff seeks a ruling removing the assigned judge for cause under Rule 42.2 of the Arizona Rules of Civil Procedure. This is the second Motion filed by Plaintiff requesting removal of the assigned judge.

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. Plaintiff provided an affidavit but fails to establish a basis to grant the motion. Plaintiff asserts that he believes the Court has repeatedly ruled in favor of the Defendant even when the Defendant's argument have been without merit, the Court has ignored or denied Plaintiff's motions, even when those motions were legally sufficient, Judge Pineda failed to discharge her duties by intentionally ignoring another judge's order, and Judge Pineda showed bias by granting Defendant's Motion to transfer the case to arbitration. Plaintiff references two motions without explanation as to how Judge Pineda failed to discharge her duties or how she ignored another judge's order. Upon review, Plaintiff simply makes conclusory allegations about the lack of merit or insufficiency of the Defendant's positions.

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Plaintiff further complains that this case was transferred to arbitration on September 6, 2023. Plaintiff certified at the time of filing his complaint that this case was not subject to compulsory arbitration. Defendant filed a controverting certificate explaining that all claims for punitive damages, emotional distress, racism, and injunctive relief, were dismissed pursuant to Minute Entry Orders dated June 9, 2023, and July 17, 2023, and there are no damages disclosed as to the remaining allegations. Judge Pineda ordered the case transferred to arbitration after reviewing Defendant Royal Riviera Condominium Association's *Certificate of Compulsory Arbitration*, filed August 28, 2023, and finding that based on the dismissal of claims pursuant to Minute Entries dated June 9, 2023, and July 13, 2023, the amount in controversy is less than \$50,000.00 and is now subject to compulsory arbitration. That other motions may be pending or that additional motions may be filed does not on its own reflect bias nor does Plaintiff's affidavit provide any explanation to support his conclusory allegation. Additionally, the Civil Rules of Procedure govern cases subject to mandatory arbitration and Plaintiff has not provided any explanation as to why mandatory arbitration is not required based on the status of this case. Disagreement with the judge's rulings is not a basis for granting a change of judge. At the heart of Plaintiff's motion is a disagreement with Judge Pineda's decisions. *See Liteky v. United States*, 510 U.S. 540, 555-56 (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 (1997) (citing *State v. Curry*, 187 Ariz. 623, 631 (App. 1996)).

Finally, "[a] change of judge for cause is not warranted if based merely on speculation, suspicion, apprehension, or imagination." *See Stagecoach Trails MHC, LLC v. City of Benson*, 232 Ariz. 562, 568 ¶21 (App. 2013); *see also United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) ("[T]o be disqualifying," a judge's "alleged bias and prejudice...must stem from an extrajudicial source" and result in a decision "on some basis other than what the judge learned from his participation in the case."). To overcome this presumption, a litigant must "set forth a specific basis for the claim of partiality and prove by a preponderance of the evidence that the judge is biased or prejudiced." *State v. Cropper*, 205 Ariz. 181, 185 (2003) (citation and internal quotations omitted). Plaintiff has wholly failed to meet his burden.

**IT IS ORDERED** denying Plaintiff's Motion to Recuse filed September 12, 2023.