



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY  
COURT OF APPEALS**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480) 362.6315

In the Matter of:

**TESS MARIE ENOS,**

An Incompetent Member.

**SARAH DE OLIVEIRA,**

Petitioner/Guardian Ad

Litem/Appellant.

Case No.: **APC 17-0019**

**C-10-0123**

**OPINION AND ORDER**

FILED  
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT  
2017 DEC -7 AM 8:36

On August 29, 2017, Judge Anthony Little denied the request of a guardian ad litem (GAL) for a change of judge in a guardianship case. The GAL has appealed that ruling. For reasons set forth below, we remand with instructions that the Community court to reassign this case to a new judge as requested.

**BACKGROUND**

On February 24, 2017, Tess Enos's brother filed a Petition for Guardianship seeking to replace the Salt River Pima-Maricopa Indian Community Office of Public Fiduciary (OPF) as her conservator. The OPF had been serving as Ms. Enos's temporary guardian as well as her conservator. Mr. Enos's petition was served on the GAL in late March. The GAL objected to Mr. Enos's petition, and the matter was placed on Judge Joseph Manuel's calendar.

In early June, Judge Manuel set a hearing for August 29, 2017. When Judge Manuel left the bench a short time later, the GAL tried to determine which judge would subsequently hear the Enos guardianship case. The Court Administration office could not give the GAL an unequivocal

answer but indicated that Judge Little would likely be taking over Judge Manuel's cases, with some exceptions.

On the morning of the scheduled August guardianship hearing, which did take place before Judge Little, the GAL filed a notice requesting a change of judge. Because Mr. Enos failed to show up at the hearing, Judge Little dismissed his petition without prejudice. Judge Little also denied the GAL's request for change of judge, finding "that the Notice was not filed in accordance with [S.R.O. § 4-36]" and was therefore "untimely."

### DISCUSSION

"In any civil action pending in the Community court, the parties are entitled as a matter of right to a change of judge." S.R.O. § 4-36(a)(1). This right may be exercised by a party's filing a signed Notice of Change of Judge stating the name of the judge to be changed. *Id.* The notice "shall neither specify grounds nor be accompanied by an affidavit," and the request "shall be immediately honored." *Id.*

No request may be filed "more than five days after the date on which the answer to the complaint is to be filed," nor "after the assigned judge has ruled on any substantive matter" in the current proceedings or in an earlier, related case or proceeding. S.R.O. § 4-36(d). If the case before us were a matter of civil litigation requiring an answer to a complaint, and if Court Administration had advised the GAL in advance of the name of the judge who would be presiding over the August 29 hearing, then the denial of the GAL's petition may have been appropriate. However, neither of those circumstances applies here.

First, a guardianship petition does not require an answer. Therefore, the five-day-after-the-answer time restriction does not apply here. *See In the Matter of I.C.*, Case No. APJ-16-0006 (2016) (finding five-day restriction inapplicable in juvenile dependency actions, which require no written answers); *see also In the Matter of D. B.*, APJ-13-0002 (2013) (same). Section 4-36 fails to state time restrictions for noticing a change of judge in guardianship cases or other cases that require no answer. It would be most helpful for the Community Court to establish time restrictions for these cases, perhaps based on the actual date of the assignment of a Judge to the case.

Also, until the day of the hearing, the GAL had no confirmation about who the assigned judge would be in the *Enos* case. The Community Court currently lacks a formal procedure to notify parties of an initial assignment of a judge to a case or when there has been a change of judge.

Notices of change of judge are individual; they apply only to the particular judge assigned to a case. It is therefore impossible to file a notice of change of judge until the parties know the identity of that judge. Here, the GAL filed the notice as soon as the judge's identity was established: August 29. To preclude the GAL from obtaining a change of judge under the circumstances would unfairly deprive the GAL of an entitlement that exists "as a matter of right."

The third element that could preclude a change of judge in this case--ruling on a substantive matter--is likewise inapplicable here. There had not been a ruling before August 29 on any substantive matter in this case or in any earlier related case or proceeding. At the August 29 hearing, the court dismissed the guardianship petition without prejudice because the petitioner failed to appear and provided no valid address at which he could be reached. Because the court's ruling left open the substantive matter of guardianship, the nature of the court's ruling was more procedural than substantive. *See In the Matter of I.C.* at 4-5 (discussing *Erie's* distinction between procedural and substantive matters and determining that trial judge's prior orders fell into procedural category and thus, party could file for change of judge). Therefore the court's August 29 ruling dismissing the guardianship petition did not preclude the GAL from obtaining a change of judge for further proceedings in this case.

We are aware of the possibility that if all parties had been assembled and ready to present their case at the August 29 hearing, the granting of a change of judge request at the last minute could inconvenience the parties and witnesses, promote inefficiency, waste the court's and the parties' time, and even lead to a lack of faith in the judicial process. We again strongly urge the Community Court to develop procedures to guide parties in civil cases in which no answer is required. At the very least, parties need to be notified in writing of the precise date on which a new judge is assigned to their case.

## CONCLUSION AND ORDER

Under SRP-MIC law, the GAL was entitled to an immediate change of judge in this case on August 29.

**IT IS ORDERED THAT THIS CASE IS REMANDED TO THE COMMUNITY COURT FOR IMMEDIATE REASSIGNMENT.**

**ISSUED** this 7th day of December, 2017

SEAL

Electronically approved 12/7/2017

/s/

Paul Bender, **Justice**

Electronically approved 12/7/2017

/s/

Mary Guss, **Justice**

Electronically approved 12/7/2017

/s/

Siera Russell, **Justice**

FILED  
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