

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 05-13-2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ARIZONA DEPARTMENT OF ECONOMIC ) No. 1 CA-SA 10-0080  
SECURITY, )  
) DEPARTMENT B  
Petitioner, )  
) MARICOPA COUNTY  
v. ) Superior Court  
) No. JD 507867  
THE HONORABLE DAVID UDALL, )  
Judge of the SUPERIOR COURT OF ) **DECISION ORDER**  
THE STATE OF ARIZONA, in and )  
for the County of MARICOPA, )  
)  
Respondent Judge, )  
)  
CHRISTINA L. and ELLEN L., )  
)  
Real Parties in Interest. )  
\_\_\_\_\_ )

Judges Patricia K. Norris, Maurice Portley, and John C. Gemmill have received the special action filed by Petitioner Arizona Department of Economic Security (ADES), the answer to the petition for special action filed by Real Party in Interest Christina L. ("Mother"), ADES's reply, each side's appendices, and Mother's notice of intent to seek attorney's fees. We have also received oral argument of counsel on May 11, 2010. After consideration, we decide in our discretion to exercise special action jurisdiction and grant relief as follows.

We accept jurisdiction because the Petitioner does not have a plain, adequate, or speedy remedy by appeal, see Ariz. R.P. Spec. Act. 1(a), and because this is an issue that is likely to arise again, see *Demarce v. Willrich*, 203 Ariz. 502, 504, ¶ 5, 56 P.3d 76, 78 (App. 2002). We reject Mother's argument that ADES's claim has been waived on the basis of laches. The petition was timely filed.

The trial court ordered that the Assistant Attorney General assigned to the case, Karin Cather, be recused and another assistant Attorney General assigned to the matter. It found: (1) Cather had a conflict of interest under Ethical Rule ("ER") 1.7 of the Arizona Rules of Professional Conduct because Mother's counsel, Anne M. Williams, represented Cather's former husband during the Cathers' divorce proceedings; (2) Cather has a "personal interest with Ms. Williams over their previous litigation"; and (3) "allowing Ms. Cather to continue as the assigned Attorney General on this case has the appearance of impropriety." The court further stated, however, that it did not find Ms. Cather had acted inappropriately in any way.

We vacate this order because we believe the trial court erred in finding a conflict of interest under ER 1.7 and an appearance of impropriety sufficient to warrant disqualification of one party's choice of counsel.

Generally, every party has a right to counsel of its

choice. See *Sec. Gen. Life Ins. Co. v. Superior Court*, 149 Ariz. 332, 335, 718 P.2d 985, 988 (1986). Motions by opposing counsel to disqualify a party's attorney based on the appearance of impropriety must be viewed with considerable suspicion. *Gomez v. Superior Court*, 149 Ariz. 223, 226, 717 P.2d 902, 905 (1986). An appearance of impropriety may be a sufficient basis to disqualify counsel but only in the rarest of cases, and disqualification is unnecessary when "the conflict is so remote that there is insufficient appearance of wrongdoing." *Id.* at 225, 717 P.2d at 904.

This record does not contain the type of evidence that would support a finding Cather has a "personal interest" under ER 1.7(a)(2) sufficient to warrant her disqualification as counsel for ADES. Any potential problem arising from Cather's representation of ADES in this matter is a concern belonging primarily to ADES, and it is primarily for ADES to determine whether Cather is performing her duties professionally and appropriately. See generally *In re Shannon*, 179 Ariz. 52, 61, 876 P.2d 548, 557 (1994) (client loyalty is at heart of ER 1.7); Pmbl. ¶ 20, Ariz. R. Prof'l Conduct (purpose of Rules can be subverted when invoked as procedural weapons by opposing parties).

A personal interest under ER 1.7 is normally a financial or business interest or some kind of close familial relationship.

See Ariz. R. Sup. Ct. 42, ER 1.7 cmts. 10, 11. Neither alleged nor actual animosity between adverse attorneys, however, is in itself sufficient to constitute the type of "personal interest" warranting disqualification of opposing counsel. See, e.g., *Franklin v. Clark*, 454 F. Supp. 2d 356, 368-70 (D. Md. 2006). Our legal system will not function properly if counsel can successfully move to disqualify opposing counsel on such a ground, especially in the absence of any improper conduct. The trial court expressly found Cather had not acted improperly.<sup>1</sup> Accordingly,

**IT IS ORDERED** that the court, in the exercise of its discretion, accepts special action jurisdiction and grants relief.

**IT IS FURTHER ORDERED** vacating that specific portion of the superior court's Order filed March 8, 2010 that disqualifies Assistant Attorney General Cather from representing ADES in this proceeding.

**IT IS FURTHER ORDERED** denying Mother's request for an award of attorney's fees.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

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<sup>1</sup> We also note that the court did not conduct an evidentiary hearing prior to making its decision.