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19 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF COCHISE**

21 THE STATE OF ARIZONA, *ex rel.*
22 KRISTIN K. MAYES, Attorney General

23 Plaintiff,

24 vs.

25 COCHISE COUNTY, TOM CROSBY in his
26 official capacity as Cochise County District 1
Board Supervisor, ANN ENGLISH, in her
official capacity as Cochise County District 2
Board Supervisor, PEGGY JUDD, in her
official capacity as Cochise County District 3
Board Supervisor and DAVID W.
STEVENS, in his official capacity as Cochise
County Recorder

Defendants.

No: S0200CV202300106

**PLAINTIFF'S MOTION
FOR CHANGE OF VENUE**

(Assigned to the Honorable Thomas Fink,
Division Seven)

1 Pursuant to A.R.S. §§ 12-408 and 12-411, the State respectfully moves for a change of
2 venue and asks the Court to transfer this case to the Superior Court in and for Maricopa County.

3 ARGUMENT

4 Consistent with A.R.S. §§ 12-401(15)-(16), the State filed this action in Cochise County.
5 The State now timely seeks the change of venue to which it is statutorily entitled under A.R.S.
6 § 12-408(A).

7 **I. By statute, the State is “entitled” to a change of venue.**

8 A.R.S. § 12-401 “prescribes the *initial* venue for actions against counties.” *Yarbrough v.*
9 *Montoya-Paez*, 214 Ariz. 1, 3 ¶ 5 (App. 2006) (emphasis added). That statute provides: “Actions
10 against counties shall be brought in the county sued,” and relatedly, “[a]ctions against public
11 officers shall be brought in the county in which the officer[s] ... hold[] office.” A.R.S. § 12-
12 401(15), (16). Consistent with those provisions—and the “threshold proposition” that
13 “defendants are entitled to be sued in the county where they reside”—the State identified Cochise
14 County as a proper initial venue. *See generally Yarbrough*, 214 Ariz. at 3 ¶ 4.¹

15 Importantly, though, the “‘initial’ venue ... does not ‘fix venue immutably.’” *Id.* at 5 ¶ 13
16 (citation omitted). Rather, § 12-401 simply “creates ‘a presumptive choice of venue’ in different
17 circumstances, which can then ‘be changed upon the grounds specified by statute.’” *Id.* (citation
18 omitted); *see also Maricopa County v. Barkley*, 168 Ariz. 234, 238 (App. 1990) (observing same).

19 One of those grounds is in A.R.S. § 12-408, which states that when an action is “pending
20 in the superior court in a county where the county is a party, the opposite party is entitled to a
21 change of venue to some other county.” A.R.S. § 12-408(A). A request to transfer venue under
22 § 12-408(A) is mandatory: “When a county is a party to a suit in the Superior Court of the same
23 county and a change of venue is properly requested, it must be granted.” *Yuma County v. Keddie*,
24 132 Ariz. 552, 553 (1982); *see also City of St. Johns v. Super. Ct. of Ariz., in & for Maricopa*

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¹ Initial venue can be proper in more than one county. *See Behrens v. O’Melia*, 206 Ariz.
309, 310 n.2 (App. 2003). Here, the State appropriately erred on the side of the “rule” of § 12-
401 that prescribes initial venue as the county where defendants reside, rather than any
“exception” which must be “narrowly construed.” *Cf. Butler Law Firm, PLC v. Higgins*, 243 Ariz.
456, 459 ¶ 8 (2018).

1 Cnty., 155 Ariz. 369, 371-72 (App. 1987) (calling § 12-408 “an automatic change of venue
2 provision”).

3 The State is now “entitled” to transfer because Cochise County “is a party.” A.R.S. § 12-
4 408(A); *see Barkley*, 168 Ariz. at 238 (“The venue selected by § 12-401(15) may be changed
5 pursuant to § 12-408(A).”); *see also Yarbrough*, 214 Ariz. at 2 ¶ 2 (“Because the county is a party
6 defendant, Yarbrough filed the action in Santa Cruz County as required by A.R.S. § 12-401(15),
7 then moved for a change of venue as permitted by A.R.S. § 12-408, to have the case transferred
8 to Pima County.”). And “there is no discretion” but to grant the State’s timely motion. *GAC*
9 *Props., Inc. of Ariz. v. Farley*, 14 Ariz. App. 156, 158 (App. 1971).

10 In *GAC Properties*, for example, plaintiffs correctly brought their action against Santa Cruz
11 County and its Board of Supervisors (among other defendants of that county) in Santa Cruz. 14
12 Ariz. App. at 157. Plaintiffs then sought a transfer under § 12-408, “which requires no showing
13 other than that a county is an opposing party.” *Id.* at 158. The court of appeals held that plaintiffs
14 “were entitled to the granting of their motion” because “there [was] no discretion vested in the
15 trial court” by the statute to do anything else. *Id.*; *see Keddie*, 132 Ariz. at 553 (quoting *GAC*
16 *Properties* approvingly); *see also Yavapai County v. Super. Ct. in & for Yavapai Cnty.*, 13 Ariz.
17 App. 368, 370 (App. 1970) (stating that the “plaintiffs were required ... to bring their actions
18 against Yavapai County in the Superior Court of that County” but thereafter could “effect a change
19 of venue pursuant to ... § 12-408”).

20 Here, the State has “timely requested” transfer—this action was filed barely two weeks ago
21 and the initial hearing has not yet occurred—and therefore a “change of venue is mandatory.”
22 *Keddie*, 132 Ariz. at 553-54 (citation omitted); *cf. id.* at 554 (plaintiff waived right to seek change
23 of venue by litigating for several years before requesting transfer). Further, because the change
24 of venue is statutorily required, the Court should transfer the case promptly. *See Cochise County*
25 *v. Helm*, 130 Ariz. 262, 263 (App. 1977) (rejecting argument that the trial “court should have
26 ruled on the motion to dismiss before granting the change of venue” because once “it was shown
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1 that the [moving parties] were entitled to a change of venue as a matter of right [under § 12-408],
2 the respondent court [could not] do anything other than transfer the case”).

3 **II. Transfer to Maricopa County is appropriate.**

4 Section “12-411(B) applies to changes of venue pursuant to § 12-408,” and states that the
5 transfer “shall be to the most convenient county ... to which the objections of the parties do not
6 apply or are least applicable.” *Yarbrough*, 214 Ariz. at 8 ¶¶ 24-25; A.R.S. § 12-411(B). Thus, on
7 its face, § 12-411(B) requires the Court to consider the convenience of all parties, not just the
8 county defendants. *See Yarbrough*, 214 Ariz. at 9 ¶ 26. And, importantly, when evaluating which
9 county is “most convenient” under § 12-411(B), the Court is not limited to only the counties that
10 adjoin the initial venue, as with other venue statutes. *See Yarbrough*, 214 Ariz. at 8 ¶¶ 24-25;
11 *see, e.g.*, A.R.S. § 12-407(A) (requiring transfer to “most convenient adjoining county”).

12 To illustrate, in *Yarbrough*, the plaintiff sued defendants in Santa Cruz and then sought a
13 transfer to Pima County, but the trial court transferred to Pinal “as the more ‘fair and impartial’
14 venue.” *Yarbrough*, 214 Ariz. at 2, 9 ¶¶ 2, 26. Vacating and remanding, the court of appeals
15 observed that “in terms of convenience, at least as between Pima and Cochise Counties, ‘Pima
16 County would seem to be the appropriate forum.’” *Id.* at 9 ¶ 26 (citation omitted). That
17 observation was evidently based on the fact that Cochise County was further away for *the plaintiff*.

18 Here, the Court should transfer the case to Maricopa County. The legislature has already
19 recognized the State’s interest in litigating “[a]ctions on behalf of the state” in Maricopa County.
20 *See* A.R.S. § 12-401(17); *cf.* A.R.S. § 12-822(B) (allowing the Attorney General to transfer “an
21 action against this state” to Maricopa County). Plaintiff and its counsel are located in Maricopa
22 County, and upon information and belief, Defendants’ counsel is as well. And because the State’s
23 claims largely hinge on legal questions about Defendants’ authority rather than resolving factual
24 disputes, there is little practical reason to litigate this action any closer to Cochise County.

25 In the alternative, among the other counties between Maricopa and Cochise, Pima County
26 is the next most appropriate forum. Pima County—and specifically Tucson—is essentially
27 midway between Bisbee and Phoenix. Thus, to the extent the Court determines that convenience
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1 requires a geographic compromise, Pima County is the next best venue to balance the parties'
2 resources and interests.

3 Finally, the State notes that the Presiding Judge's sua sponte reassignment to this honorable
4 Court does not affect the State's right to change venue under § 12-408(A). The statute turns on
5 *where* an action is pending, not to *whom* an action is assigned or reassigned. A.R.S. § 12-408(A).
6 The legislature knows how to refer specifically to a "change of ... judge" and distinguishes
7 between changing "a county or judge." *E.g.*, A.R.S. § 12-411. Further, the Arizona Court of
8 Appeals has expressly held that a reassignment "to a superior court judge from another county" is
9 "not a change of venue." *Lerette v. Adams*, 186 Ariz. 628, 629 (App. 1996). Rather, when a judge
10 "who normally sits in [another county]" accepts an assignment in the forum county, the judge has
11 simply "agreed to serve as a visiting judge" in that forum county, but venue has not changed. *Id.*

12 Likewise, the reassignment here was simply a sua sponte administrative order, not a change
13 of venue prompted by party's motion and "granted" after hearing any "objections ... in the first
14 instance." A.R.S. § 12-411(A). Indeed, the reassignment order makes clear that this case
15 "remain[s] a Division Seven Cochise County case." Order Re: Reassignment of Judge,
16 CV202300106, at 1 (Ariz. Super. Ct. Mar. 9, 2023). Under the statute's plain language, this action
17 is still "pending in the superior court in a county where the county is a party." A.R.S. § 12-408(A).
18 As such, the State remains "entitled to a change of venue to some other county." A.R.S. § 12-
19 408(A).

20 CONCLUSION

21 For these reasons, the State respectfully moves the Court to transfer this case to the Superior
22 Court in and for Maricopa County or, alternatively, Pima County.

23
24 RESPECTFULLY SUBMITTED this 22nd day of March, 2023.

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16 Courts, this 22nd day of March, 2023, on:

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23 PURSUANT to the March 9, 2023, Order
24 of the Court, a copy will be mailed to:

25 Honorable Thomas Fink
26 Santa Cruz County Superior Court
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28 Nogales, AZ 85621
Attn: Court Admin/Case Mgmt. Div.

By: /s/Luci D. Davis