

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021-008265
LC2021-000180-001

01/19/2022

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT
P. McKinley
Deputy

AMERICAN OVERSIGHT

ROOPALI HARDIN DESAI

v.

KAREN FANN, ET AL.
PHOENIX NEWSPAPERS, INC.
CYBER NINJAS, INC.

THOMAS J. BASILE
DAVID JEREMY BODNEY
JOHN DOUGLAS WILENCHIK
KORY A LANGHOFER
KEITH BEAUCHAMP
JORDAN C WOLFF
DAVID ANDREW GAONA
CRAIG CARSON HOFFMAN
DENNIS I WILENCHIK

PHOENIX NEWSPAPERS, INC.
KATHY TULUMELLO

v.

ARIZONA STATE SENATE (001)
KAREN FANN (001)
WARREN PETERSEN (001)
SUSAN ACEVES (001)
CYBER NINJAS, INC. (001)

COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
REMAND DESK-LCA-CCC
JUDGE HANNAH
JUDGE KEMP

CONSOLIDATION

The Court has reconsidered its prior rulings, on two occasions, to deny the transfer and consolidation of these cases. In light of recent developments, the Court, on its own motion, hereby

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transfers LC2021-000180-001DT before the Honorable John Hannah to this Court and consolidates that case with CV2021-008265.

First and foremost, this Court granted a Stipulated Motion filed by Plaintiff American Oversight (“AO”) and the Senate Defendants to join Cyber Ninjas, Inc. (“CNI”) as a party. This dramatically changes the circumstances of this case and clearly diminishes a central rationale for denying the previous requests to transfer and consolidate, namely the existence of different parties. Although Plaintiff Phoenix Newspapers, Inc. (“PNI”) is a different Plaintiff than AO in this matter, the joining of CNI in this matter is significant. Further, despite the differences in legal theories espoused by PNI and AO, at this point in time both cases are focused on the narrow issue of forcing CNI to comply with the Court’s previous orders. Both Plaintiffs have prevailed on the issue of whether CNI’s records are public records subject to disclosure despite asserting different legal theories.

Second, both matters appear to be in a substantially similar posture. Both cases are now stalled due to CNI’s refusal to turn over public documents in their physical possession despite previous Court orders which have been affirmed on appeal. The issue of delay for AO is therefore not nearly as significant as it was when the Court previously denied the request for transfer and consolidation, and the authority provided by Rule 42(a), Ariz. R. Civ. P. will avoid unnecessary delay and costs in the future.

Third, the PNI matter no longer has any pending legal issues on appeal. Judge Hannah made a ruling relating to the legislative privilege issues but this was not appealed to a higher court. This Court’s ruling on the legislative privilege issues is before the Court of Appeals who took the matter under advisement after hearing oral argument on December 1, 2021. The Court of Appeals’ ruling will be the law of the case on the issue of legislative privilege and will not result in inconsistent rulings.

If actions before the court involve a common question of law or fact, the court may consolidate the actions. Rule 42(a)(2), Ariz. R. Civ. P. A trial court unquestionably has the power to vacate or modify a previous order of consolidation where good cause appears. *Yavapai County v. Superior Court In and for Yavapai County*, 13 Ariz. App. 368, 369-70 (1970). Whether to consolidate actions under Rule 42(a), Ariz. R. Civ. P. is a matter committed to the trial court’s discretion and a consolidation order will be disturbed on appeal only for an abuse of discretion. *Hannah v. McCarroll*, 188 Ariz. 492 (1996).

It is hereby ordered that LC2021-000180-001DT shall be transferred and consolidated with CV2021-008265. The Status Conference on January 21, 2022 at 1:30 p.m. before Judge Hannah

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is vacated. A Status Conference in this matter is set for January 25, 2022 at 1:30 p.m. before this Court.

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NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.