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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MADISON E. VARGA,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

RADY CHILDREN'S HOSPITAL AND  
HEALTH CARE CENTER et al.,

Real Parties in Interest.

D062421

(San Diego County  
Super. Ct. No. 37-2012-000092717-CU-  
MM-CTL)

PROCEEDINGS in mandate after superior court denied peremptory challenge.

John S. Meyer, Judge. Petition granted.

**FACTUAL AND PROCEDURAL HISTORY**

Madison Varga (through her guardian ad litem) filed a medical malpractice action against Rady Children's Hospital and Health Care Center and others (together defendants). The case was assigned to Judge Lewis, who disqualified herself because of a conflict. The court issued a notice of case reassignment assigning the case to Judge

Meyer on July 9, 2012, and served the notice by mail on counsel for all parties on July 10. Vargas's attorney received the notice of case reassignment on July 16, and filed a peremptory challenge to Judge Meyer on July 26. The court denied the challenge as untimely.

Vargas asserts her challenge was timely. Defendants have declined our request for an informal response and advised us they will not be opposing the petition. We issued *Palma* notice. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

### DISCUSSION

In San Diego County, "[n]ew cases are randomly assigned to a judicial officer *for all purposes.*" (San Diego County Superior Court Rules, rule 5.2.1(A), emphasis added.) In civil cases, any party who wants to file a peremptory challenge to a judge assigned for all purposes must do so "within 15 days after notice of the all purpose assignment" or, if a party has not previously appeared, within 15 days after his or her first appearance. (Code Civ. Proc.,<sup>1</sup> § 170.6(2).) In cases where a judge is later assigned to replace the judge originally assigned for all purposes, a party who has already appeared in the action must file his or her challenge within 15 days of receiving notice of the change of judge. (*Motion Picture & Television Fund Hospital v. Superior Court* (2001) 88 Cal.App.4th 488, 494; *Cybermedia, Inc. v. Superior Court* (1999) 72 Cal.App.4th 910, 913.) With five days for service by mail added to this 15-day period, a party has 20 days to file a peremptory challenge to a newly assigned direct calendar judge. (§1013; *California Business Council v. Superior Court* (1997) 52 CA4th 1100, 1107.)

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Code of Civil Procedure.

The notice of reassignment in this case was served by mail on July 10 and received on July 16. Whether we determine timeliness from the date of service by mail or from the date of actual receipt, Varga's July 26 peremptory challenge was timely.

Because the facts are not in dispute, the law is well settled, and defendants have in essence conceded the issue, we conclude a peremptory writ in the first instance is proper. (Code of Civ. Proc., § 1088; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223, disapproved on another ground in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 724, fn. 4; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.)

#### DISPOSITION

Let a writ of mandate issue directing the superior court to vacate its order of July 26, 2012, and issue an order granting the challenge and referring the case to the Presiding Department for reassignment. Each party shall bear his/her/its own costs in the writ proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(B).) This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(3).)

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IRION, J.

WE CONCUR:

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McINTYRE, J.

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McDONALD, Acting P. J.