

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: July 12, 2024 11:52 AM
THE PEOPLE OF THE STATE OF COLORADO v. <b>Defendant(s)</b> AHMAD AL ALIWI ALISSA	<p style="text-align: center;"><b>△ COURT USE ONLY △</b></p> Case Number: 2021CR497 Division: 13                      Courtroom:
<b>Order:Mr. Alissa's Motion to Recuse (D-057)</b>	

The motion/proposed order attached hereto: NO ACTION TAKEN.

DA response due no later than July 26, 2024.

Issue Date: 7/12/2024



INGRID SEFTAR BAKKE  
 District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 <sup>th</sup> Avenue Boulder, CO 80306	σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO  v.  <b>AHMAD AL ALIWI ALISSA</b> Defendant.	
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. <b>21CR497</b>  Division 13
<b>MR. ALISSA'S MOTION FOR RECUSAL (D-057)</b>	

AHMAD ALISSA, by and through counsel, moves Judge Ingrid Bakke to recuse herself from the above-captioned case. In support of this motion, counsel asserts the following:

**FACTUAL BACKGROUND**

1. On March 22, 2021, Mr. Alissa went to the King Soopers in Boulder and shot and killed ten people. He was arrested that same day. He has since entered a not guilty by reason of insanity plea and is set for trial in September of 2024.
2. Judge Bakke has presided over all court hearings since Mr. Alissa's Rule 5 advisement.

**LAW AND ARGUMENT**

1. The Due Process clauses of the United States and Colorado constitutions guarantee a trial before a fair and impartial tribunal. *See Sanders v. People*, 2024 CO 33, 2024WL2715997 (Colo.2024). "A fair trial in a fair tribunal is a basic requirement of due process." *Roehrs* at 1233 (citing *In re Murchison*, 349 U.S. 133, 136 (1955)). A criminal defendant has the right to have a fair and impartial judge sit on their case at all stages. *Id.* (citing *People v. Hagos*, 250 P.3d 596, 611 (Colo. App. 2009)). When evaluating a motion to disqualify a judge, the court must bear in mind that a judge cannot be tainted by bias or prejudice. *See id.* (citing *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002)).

2. In addition to the due process clauses of the United States and Colorado Constitutions, concerning a motion to disqualify a judge, there are statutes, rules, and codes that govern judicial conduct in Colorado the court must look at when considering a motion to recuse. The applicable laws governing recusal are found under C.R.S. § 16-6-201, Canon 2 of the Colorado Code of Judicial Conduct, C.J.C. Rule 2.11 (A)(2)(d), and C.R.C.P. Rule 21(b). *See People v. Roebbers*, 440 P.3d 1231, 1234–35 (Colo. App. 2019).
3. Under C.R.S. § 16-6-201(1)(d), a judge must be disqualified to hear or try a case if the judge *is in any way interested or prejudiced* with respect to *the case, the parties*, or counsel. (emphasis added).
4. Any motion for disqualification of a judge must be verified and supported by the affidavits of at least two credible persons not related to the defendant, stating facts showing the existence of grounds for disqualification. C.R.S. § 16-6-201(3).
5. Under Canon 2 of the Colorado Code of Judicial Conduct, “a judge shall perform the duties of a judicial officer impartially, competently, and diligently.” C.J.C. 2.11(A). With regards to disqualification, a judge must disqualify himself in any proceeding in which the judge’s impartiality might reasonably be questioned. C.J.C. 2.11(A). This includes if the judge has personal bias or prejudice concerning a party or personal knowledge of facts that are in dispute. C.J.C. 2.11(A)(1). Disqualification is required not only when a judge harbors an actual bias but whenever the judge’s involvement might create the appearance of partiality, that is, when a “reasonable observer might have doubts about the judge’s impartiality.” *People in Int. of A.G.*, 262 P.3d 646, 650 (Colo.2011).
6. Under Canon 2.11 of the Colorado Code of Judicial Conduct, courts have expanded on what constitutes prejudice based on personal knowledge of facts in dispute and when that requires recusal. Typically, when a judge has knowledge of a case based on what they learn in their judicial capacity, the use of that information is not the kind that requires disqualification. *Roebbers* at 1237. This rule is known as the “extrajudicial source doctrine.” The doctrine applies when a defendant moves to recuse a judge on the basis that the judge previously ruled against him. *Id.*
7. There are exceptions to the “extrajudicial source doctrine.” If the judge formed an opinion regarding guilt of the defendant and the opinion is so pronounced that it is likely to affect the judge’s ability to be impartial at trial, this is an exception to the judicial source doctrine and recusal is required. *See id.*
8. A judge must recuse themselves under Crim. P. 21(b)(1)(IV) when “the judge is *in any way interested or prejudiced* with respect to the case, the parties, or counsel. (emphasis added). Judicial disqualification is required when “it could *reasonably* be inferred from the facts alleged in the motion to recuse and supporting affidavits that the judge has a bias or prejudice that will *in all probability* prevent him or her from dealing fairly with a party.” *Sanders v. People*, 2024 CO 33 at ¶ 40; *citing People v. Arledge*, 938 P.2d 160, 166-67 (Colo.1997).
9. In examining a motion to recuse, the court must assess the legal sufficiency of the motion, accepting the facts stated in the motion and affidavit as true. *Roebbers* at 1235.

10. In ruling on a motion to recuse, the court must examine not only actual prejudice but also the mere appearance of prejudice. *Id.* Either actual prejudice or its mere appearance can require the disqualification of a judge. *Id.* (citing *Estep v. Hardeman*, 705 P.2d 523, 526 (Colo. 1985)). “Even if the judge is entirely convinced of his own impartiality, [she] must take care not to allow the justice system to be impugned by an appearance of partiality. *Id.* (citing *People v. Botham*, 629 P.2d 589, 595 (Colo. 1981)).
11. In ruling on a motion to recuse, concerns of prejudice and impartiality must be given the “highest consideration.” *Id.* (citing *Smith v. Beckham*, 683 P.2d 1214, 1216 (Colo. App. 1984)). This level of consideration is necessary because of the importance of securing confidence of litigants and to maintain public respect for the courts. *Id.*
12. Due process requires that Judge Bakke recuse herself from Mr. Alissa’s case because objectively there is the probability of actual bias on Judge Bakke’s part that is sufficiently high to undermine Mr. Alissa’s right to a fair trial. The objective probability of bias can be seen throughout Judge Bakke’s emails to the parties. In particular, in considering Mr. Alissa’s motion to continue the trial, we know that Judge Bakke has a direct and personal interest in having the trial finished before the Holidays. *See May 3, 2024 Email.* We further see actual bias on the part of Judge Bakke in her statements to the victims and the victim’s families. Since the beginning of this case, she has been pushing to move the case along. *See September 7, 2021 transcript*, pg. 8/21-25. Judge Bakke has demonstrated a substantial interest on her part in getting this case to trial as quickly as possible at the behest of the victims and the victim’s families. Judge Bakke’s statements to counsel through emails and statements to the victims and victim’s families in Court demonstrate a bias that is constitutionally intolerable and she must recuse herself.
13. Recusal of Judge Bakke is further supported under section 16-6-20(1)(d) and Crim. P. 21(b). It can reasonably be inferred Judge Bakke has a bias or prejudice that will in all probability prevent her from dealing fairly with Mr. Alissa. It is a reasonable inference that Judge Bakke has a bias or prejudice against Mr. Alissa through her emails prior to her ruling on the motion to change venue. In addition to her emails we have Judge Bakke’s statements directly to the victims and the victim’s families early on in the case and most recently on May 7, 2024. The combination of Judge Bakke’s emails with her statements in Court make it objectively reasonable probability that she will not be fair to Mr. Alissa or his counsel in making decisions.
14. A reasonable observer might have doubts about Judge Bakke’s impartiality due to her comments in court and her emails to the parties and therefore she must recuse herself under C.J.C. 2.11(A). Impartially requires the Court to keep an “open mind” in considering issues that may come before a judge. *C.J.C. Terminology.* It is objectively reasonable to believe there is a mere appearance of impropriety when the Court is contacting the jury commissioner about how the trial can/will proceed, creating schedules about how the trial can/will proceed all prior to hearing and considering a pending motion to change venue. *See People v. Gallegos*, 251 P.3d 1056, 1063 (Colo. 2011) (stating that “the standard for granting a motion for disqualification goes beyond a search for actual bias, and instead requires disqualification of any judge whose impartiality *may reasonably be questioned.*” Emphasis added.) Judge Bakke has gone a step further however and demonstrated actual bias against Mr. Alissa in putting her own personal schedule ahead of the rights of Mr. Alissa to effective assistance of

counsel, right to a fair trial and right to due process under both the Colorado and United States Constitutions. *See May 3, 2024 Email.*

### GOOD CAUSE UNDER C.R.C.P. RULE 21

15. Under Colorado Rules of Criminal Procedure Rule 21(b)(1) within fourteen days of a case being assigned to a court, a motion supported and verified by affidavits of at least two credible persons may be filed. After the fourteen day period the motion may be filed if good cause is shown to the court as to why it was not filed within the original fourteen day period.
16. Although there is this fourteen day timeline set out in Rule 21(b)(1), case law establishes that when a judge is statutorily required to recuse themselves and they do not, it is structural error. *People v. Garcia*, 2022 COA 83 (2022). A structural error is a constitutional defect and requires automatic reversal because they defy analysis by harmless error standards. *People v. Washington*, 517 P.3d 706, 710 (Colo.App.2022).
17. Counsel did not have concerns of Judge Bakke's assignment to this case the first fourteen days. Counsel does not take filing a motion to recuse lightly and would not do so frivolously. When the concerns of counsel started to arise, counsel wanted to make sure and do their due diligence prior to filing this motion. It was only after care and consideration that counsel believed their concerns rose to such a level that they had no choice but to file this motion.
18. For these reasons, there is good cause to file this motion outside of fourteen days.
19. Further, under *People v. Garcia*, if the court denied consideration of this motion and there is a statutory duty for Judge Bakke to recuse herself under C.R.S. § 16-6-201, this would constitute reversible error.

WHEREFORE, Mr. Alissa requests Judge Bakke recuse herself from this case and the case be assigned to an impartial and neutral judicial officer. Mr. Alissa makes this motion under his right to a fair trial, right to due process, right to equal protection, and right to effective assistance of counsel under both the Colorado and United States Constitutions.

MEGAN A. RING  
COLORADO STATE PUBLIC DEFENDER



Kathryn Herold #40075  
Supervising Deputy State Public Defender



Samuel Dunn #46901  
Deputy State Public Defender

#### Certificate of Service

I hereby certify that on \_\_\_\_ July  
8\_\_\_\_\_, 2024, I served the foregoing  
document through Colorado E filing to all  
opposing counsel of record.

\_\_\_\_\_  
KH

Dated: June 25, 2024

Attachment to Order - 2021CR497