

Court “to take appropriate action to achieve a swift and fair resolution of the proceedings.” C.R.S. § 24-4.2-302.5(1)(o).

II. LAW

A defendant has a constitutional guarantee to a trial before a fair and impartial judge. *In re Murchison*, 349 U.S. 133, 136 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process.”); *see* U.S. CONST. amend. XIV; COLO. CONST. art. II, § 25. Whether a judge should be disqualified is guided by the Due Process Clauses of the United States and Colorado Constitutions; C.R.S. 16-6-201(1)(d); Colo. R. Crim. P. 21(b); and the Colorado Code of Judicial Conduct (“C.J.C.”) 2.11.

C.R.S. § 16-6-201 states in pertinent part: “A judge of a court of record shall be disqualified to hear or try a case if . . . [she] is in any way interested or prejudiced with respect to the case, the parties, or counsel.” The grounds for disqualification are identical to Colo. R. Crim. P. 21(b). *See Sanders v. People*, 2024 CO 33, ¶ 39; *Comiskey v. District Court In and For County of Pueblo*, 926 P.2d 539, 541 (Colo. 1996). Rule 21(b) reads, in part, that a motion for substitution of the judge assigned to a case may be filed when, “[t]he judge is in any way interested or prejudiced with respect to the case, the parties, or counsel.” Colo. R. Crim. P. 21(b). The C.J.C. similarly states “[a] judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality judiciary.” C.J.C. 2.11(A). The C.J.C. defines impartiality as: “absence of bias or prejudice in favor of, or against, particular parties or classes or parties, as well as maintenance of an open mind in considering issues that may come before a judge.” *Sanders*, ¶ 52.

In a motion for recusal, “[t]he mere expression of a belief that the judge would not give the defendant a fair and impartial trial . . . is in no sense a compliance with the requirements of this section that the prejudice of the judge must be shown.” *Young v. People*, 130 P. 1011, 1013 (1913). The moving party must verify and support the alleged facts showing grounds for disqualification with affidavits of at least two credible persons not related to the defendant. C.R.S. § 16-6-201(3). In a ruling on a motion for recusal, the judge must accept all factual statements contained within the motion and affidavits as true. *People v. Julien*, 47 P.3d 1194, 1199 (Colo. 2002). A judge must disqualify herself where the alleged facts might create the appearance of partiality, i.e., when a “reasonable observer might have doubts about the judge’s impartiality.” *People ex rel. A.G.*, 262 P.3d 646, 650 (Colo. 2011). This is true even where the judge is convinced of her own impartiality. *People v. Roehrs*, 2019 COA 31, ¶ 12.

In addition to the appearance of impropriety, actual bias is grounds for recusal. *People ex rel. A.G.*, 262 P.3d at 650 (noting recusal under C.J.C. 2.11(A) is intended to protect public confidence in the judiciary rather than protect the individual rights of litigants, where due process and Colorado’s statutes and rules of procedure intend to protect the rights of defendants). Actual bias exists if a judge has a bias or prejudice that in all probability will prevent her from dealing fairly with a party. *Id.*; *Sanders v. People*, 2024 CO 33, ¶ 41; *People v. Drake*, 748 P.2d 1237, 1249 (Colo. 1988) (actual bias is shown where “the judge had a substantial bent of mind against” a litigant). Bias must be clearly established in the record. *Id.*

Adverse legal rulings alone do not constitute grounds for claiming prejudice or bias requiring a judge's disqualification. *Bocian v. Owners Insurance Company*, 2020 COA 98, ¶ 23; *see also People in Interest of S.G.*, 91 P.3d 443, 447 (Colo. App. 2004) (a judge's ruling on a legal issue or opinions formed against a party are not bases for disqualification, "[u]nless accompanied by an attitude of hostility or ill will toward a party."); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) (even a judge who makes critical, disapproving, or even hostile remarks to counsel or the parties does not establish bias, unless there is such a high degree of favoritism or antagonism that a fair judgment is impossible).

In the context of a motion to continue, whether the motion is granted is within the sound discretion of the trial court. *People v. Alley*, 232 P.3d 272, 274 (Colo. App. 2010) (citing *People v. Hampton*, 758 P.2d 1344, 1353 (Colo. 1988)). Part of a court's consideration in granting a continuance is the rights of the victims, their families, and judicial efficiency. A Court must, for example, ensure a victim's right that "in any criminal proceeding the court, prosecutor, and other law enforcement officials will take appropriate action to achieve a swift and fair resolution of the proceedings[.]" C.R.S. § 24-4.1-302.5(1)(o). Of course, a court's compliance with the VRA must be weighed in conjunction with the defendant's rights.

Finally, when weighing the public's interest in the efficiency and integrity of the judicial process, the Court may consider any number of factors which it deems relevant, including whether a continuance would inconvenience witnesses, the court, counsel, or the parties; whether other continuances have been granted; and whether any other case-specific factors that necessitate or weigh against further delay. *People v. Brown*, 2014 COA 25, ¶ 23.

III. DISCUSSION

Defendant moves for this Court's recusal for two reasons: (1) the Court has a direct and personal interest in having the trial move forward; and (2) the Court has demonstrated actual bias against Defendant in its comments to the victims and victims' families.

A. Moving the Trial Forward and Email Communications

Defendant asserts that not only is there "a mere appearance of impropriety", but the Court has demonstrated actual bias against Mr. Alissa. *Motion*, ¶ 14. Actual bias must be clearly established in the record. *Drake*, 748 P.2d at 1249. Defense counsel first contends the Court has a direct and personal interest in having the trial finished before the holidays; *see Counselor Kathryn Herold's Affidavit in Support of Recusal (D-057A)*, ¶ 7 ("Herold Affidavit"); *Counselor Samuel Dunn's Affidavit in Support of Recusal (D-057B)*, ¶ 7 ("Dunn Affidavit").

From emails, Defendant asserts it can be reasonably inferred the Court "has bias or prejudice against Mr. Alissa," because, "[t]he combination of Judge Bakke's emails with her statements in Court make it [an] objectively reasonable probability that she will not be fair to Mr. Alissa or his counsel in making decisions." *Motion*, ¶ 13. Defendant concludes the Court has demonstrated actual bias against Defendant, "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." *Id.*, ¶ 14.

It must be reiterated that this matter has been pending since March of 2021. The People filed a *Complaint and Information* on March 24, 2021. The trial has been continued once, at the request of Defense counsel. Other important factors at play include Mr. Alissa's competency, restoration, and mental health evaluations, all of which have taken considerable time to address. Defense counsel, however, takes issue with the Court "pushing the case forward", alleging that its decision to hold the trial as scheduled is premised on personal motivations to accommodate her own schedule. Markedly, however, Defense counsel's briefing is devoid of any authority that supports the proposition that a judge cannot ensure that a case moves along in a timely manner.

The issue of whether the trial should be continued was already litigated by the parties. *See Minute Order RE: Status Conference* (May 8, 2024). The Court notes, however, that whether a motion for continuance is granted lies within the sound discretion of the trial court, and the trial court's ruling will not be disturbed absent abuse of discretion. *Alley*, 232 P.3d at 274. Moreover, a trial court may consider "any other case-specific factors that necessitate or weigh against further delay." *See supra, Brown*, ¶ 23. That is not to say that a judge's schedule is a factor that necessitates movement, only that the Court has a duty to consider all relevant circumstances in granting, or denying, a motion to continue. The Court did grant Defense a continuance, though not as far out as Defendant had hoped. *See infra*, III.B (discussing the May 7, 2024, hearing); *see Bocian*, ¶ 23 (adverse rulings alone do not support prejudice or bias requiring disqualification).

Defense counsel takes further issue with this Court's email communications with the Boulder County Jury Commissioner. Nonetheless, Defense counsel's briefing is similarly devoid of legal authority to support that a Judge may not communicate with parties concerning trial logistics, especially in a case where approximately 1,500 potential jurors will be summoned.

Further, email communications regarding Mr. Alissa's medication management and housing at the Boulder County Jail include *all* parties. As previously noted, Mr. Alissa's competency has been a factor throughout these proceedings, and certain precautions are necessary to help Mr. Alissa maintain competency throughout trial. Mr. Alissa has struggled with medication compliance. As such, the parties have discussed medication management with the Jail and Colorado Mental Health Hospital in Pueblo ("CMHIP"), with particular concern addressing Mr. Alissa's continued competency. None of these communications demonstrate impropriety, whether by appearance or in fact.

B. Bias in favor of the Victims and Victims' Family Members

Next, Defendant moves for dismissal because of Court statements to the victims and the victims' families implicating bias. Defendant specifically focuses on statements made by the Court during the motions hearing on May 7, 2024. The hearing was held to address Defendant's motion for a second sanity and mental condition evaluation and to continue trial. The Court ultimately granted a short continuance, vacating the jury trial previously set to begin on August 5, 2024, and resetting jury selection to begin on August 26, 2024, with the first day of trial set on September 3, 2024. The Court addressed the victims and victims' family members at the hearing, acknowledging the apparent tension and frustration of all parties involved, and that the trial needed to proceed in a timely fashion. *Herold Affidavit*, ¶ 8; *Dunn Affidavit*, ¶ 8. The Court also noted it must weigh

Defendant's rights, including his right to effective counsel, and commented that it believed Defense counsel was doing what is best for their client. *Id.*

In addition to constitutional, procedural, and ethical obligations to the defendant, courts must consider the rights of victims and judicial efficiency. *See* C.R.S. § 24-4.1-302.5(1)(o); *Brown*, ¶ 23. This case has been pending since late March 2021. The Court carefully weighed Mr. Alissa's rights, the rights of the victims and their family members, and the need for judicial efficiency. Over three years, the Court has made favorable rulings for both parties, including a partial granting of Defendant's motion for a continuance filed on May 3, 2024, more than three years from the date of alleged offense. *See Bocian*, ¶ 23; *People in Interest of S.G.*, 91 P.3d at 447. The Court has qualified its statements to victims and their family members with the underlying necessity to protect Mr. Alissa's constitutional rights, including his right to a fair trial. *See Herold Affidavit*, ¶ 8; *Dunn Affidavit*, ¶ 8. The Court has acknowledged that the criminal process can take time, and it can be confusing to lay people (i.e., the victims and their families), but that Mr. Alissa has certain rights that must be protected. Statements made by the Court have not been "accompanied by an attitude of hostility or ill will", nor has the Court exhibited a high degree of favoritism or antagonism toward either party. *See Bocian*, ¶ 23; *People in the Interest of S.G.*, 91 P.3d at 447; *Liteky*, 510 U.S. at 555.

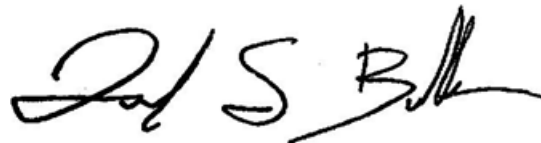
Finally, the Court finds it has been impartial in presiding over Mr. Alissa's trial thus far and will continue to do so until the matter is resolved.

C. CONCLUSION

WHEREFORE, the Court **DENIES** Mr. Alissa's *Motion for Recusal*, finding (1) there is no risk for the appearance of impartiality; (2) there is no actual bias; (3) and the Court's communications with the Jury Commissioner and other parties regarding trial logistics are harmless, and necessary.

SO ORDERED this 5th day of August 2024,

By the Court



Ingrid S. Bakke District Court Judge