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COMBINED COURT–MONTEZUMA COUNTY – STATE OF COLORADO **Address:** 865 N. Park St., Cortez, Colorado 81321 **Phone:** (970) 565-1111	
PEOPLE OF THE STATE OF COLORADO (Plaintiff) **vs.** **HARRY BURRIS (Defendant)**	DATE FILED July 14, 2025 5:47 PM FILING ID: 6A7467FB35DF1 CASE NUMBER: 2024M446
Hon. JEREMY E. REED (Atty #39013) **District Attorney - 22nd Judicial District** 109 West Main Street, Cortez, Colorado 81321 Phone: (970) 565-3788 Fax: (970) 565-9396	▲ Court Use Only ▲ **Case No.:** **24M446**

MOTION TO RECONSIDER MOTION DENYING DISTRICT ATTORNEY'S MOTION TO DISQUALIFY JUDGE IAN MACLAREN

COMES NOW the People of the State of Colorado and Jeremy E. Reed, District Attorney for the 22nd Judicial District, State of Colorado, and requests this Court reconsider it's Order denying the motion for Disqualification, and as grounds states the following:

1. On April 15, 2025, the People filed their motions to disqualify Judge Ian MacLaren.

2. The People fully adopt and incorporate the contents of that motion in this motion to reconsider.

3. The motion was supported by two affidavits alleging facts sufficient to warrant disqualification, as required by C.R.S. 16-6-201.

4. This motion is filed as a motion to reconsider. The People state this is appropriate, given the basis of the Court's ruling was ripeness. Should the court determine that a motion to reconsider is untimely under the rules, the People state they would proceed with this motion as a new filing of their motion to disqualify, and fully incorporate the content of the motion initially filed April 15, 2025.

5. On April 28, 2025, the Court entered it's order denying the motion.

6. The grounds and rational for denial cited by the Court are detailed below:

    a. At the time of the motion to disqualify, the case was stayed based on the Defendant's entry into a diversion agreement.

    b. The Order Staying Proceedings was entered in open Court on February 25, 2025.

    c. No filings other than the motion to disqualify have been filed since the matter was stayed.

    d. Given that the People have filed a Motion seeking to disqualify the sitting judge from a case that has been stayed pursuant to a diversion agreement, the fundamental question before the Court is whether the People's Motion to Disqualify is ripe for a ruling.

    e. In weighing whether an issue/motion is ripe for ruling, courts test "whether an issue is real, immediate, and fit for adjudication." People v. Vigil, 529 P.3d 635, 640 (Colo.App.2023) citing Zook v. El Paso County, 494 P.3d 659 (Colo.App.2006). In applying this principle, courts seek to refrain from engaging in "premature adjudication of issues that are not yet fully developed or that depend on future events that may occur. Id. Generally, courts "refuse to consider uncertain or contingent future matters that

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suppose speculative injury that may never occur." People v. Vigil, 529 P.3d 635 at 640 citing Board of Directors, Metro Wastewater Reclamation Dist. v. National Union Fire Insurance Co. of Pittsburg, PA, 105 P.3d 653 (Colo. 2005).

f. The People's Motion to Disqualify is denied on the basis that it is not yet ripe.

g. As long as the case is stayed, any injury that might be posed by the Defendant by this Court is speculative at best.

h. Furthermore, the issuance of a disqualification order would necessitate a hearing pursuant to C.R.S. 16-6-201(4). Such a hearing at this juncture would neither promote judicial efficiency or the conservation of judicial time and resources.

i. In the event that the People file a Motion to Dismiss this matter based on the Defendant's compliance with the terms of the diversion agreement, the Court shall issue a written order dismissing the matter as is this Court's standard practice

j. In the event that the People indicate that they intend to prosecute this matter, the Court shall issue appropriate orders as required by C.R.S. 16-16-201.

i. See Court's Order, April 28, 2025.

RIPENESS OF THE MOTION

7. While the People disagree that the motion was not yet ripe, and will discuss those reasons below, the People are now in a position where it will be necessary for the Court to rule on a filing by the People, and as such, the matter is inarguably now ripe.

8. The Court's finding that the issue was not yet ripe for decision is misplaced. By the Court's own reasoning, it is anticipated a ruling of some kind will be required by the Court in the future. "In the event the People file a motion to Dismiss this matter based on the Defendant's compliance…the Court shall issue an order dismissing the matter as is this Court's standard practice.

9. The danger is this finding is demonstrated in The PEOPLE of the State of Colorado, Petitioner, v. The DISTRICT COURT IN AND FOR the THIRD JUDICIAL DISTRICT, State of Colorado, and the Honorable Dean C. Mabry, District Judge thereof, Respondents, 560 P2d 828 (1977).

10. In Mabry, the Supreme Court of Colorado makes a number of findings pertinent to this matter. In relation to this Court's statement that if a motion to dismiss is filed, it shall be granted, the specifically found that if the Judge should have disqualified himself, then "*It follows that the respondent judge had no jurisdiction to decide the defendants' motion to dismiss case No. 23798 as barred by the statute of limitations, and we have no jurisdiction to consider whether or not he was correct in dismissing that case. The order of dismissal in case No. 23798 is hereby vacated, and the court is ordered to reinstate that case."* Id @ 833.

11. Here, as will be discussed below, Judge MacLaren should have granted the motion to disqualify. If that is true, Judge MacLaren has no jurisdiction in the matter, and granting even a motion to dismiss would be without effect, and any effort promote judicial efficiency or conserve judicial time and resources would be without any beneficial effect. In reality, by denying the motion, if the Court were to grant (or deny) any subsequent motions, the judiciary would have to expend

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significant time and resources in resolving the issue of jurisdiction (or lack thereof) on the part of Judge MacLaren.

12. In any event, the motion to disqualify is without question now ripe, and should be granted. A new judge should be appointed to hear anything further in this case.

ANY INJURY TO DEFENDANT WOULD BE SPECULATIVE

13. Motions to disqualify are specifically to be decided on, among other things, the "appearance of impropriety."

14. "Even where there is no actual bias, a judge must disqualify himself if his involvement with a case might create the appearance of impropriety." Bocian v. Owners Insurance Company, App.2020, 482 P.3d 502

15. As such, the Court's portion of it's ruling that the speculative nature of the harm renders the motion not ripe is misguided at best. The rule specifically looks at the speculative nature of harm that may occur. It is the appearance that bias may exist that matters. No such actual bias is necessary, and quite the opposite, the simple appearance of any fact that suggests bias is sufficient to warrant disqualification.

16. "Even if a judge is convinced of his own impartiality, disqualification is nonetheless required if circumstances compromise the appearance of fairness and impartiality, such that the parties and the public are left with substantial doubt as to the ability of the judge to fairly and impartially resolve pending litigation." Bocian v. Owners Insurance Company, App.2020, 482 P.3d 502

THE ISSUANCE OF A DISQUALIFICATION ORDER WOULD NECESSITATE A HEARING PURSUANT TO C.R.S. 16-6-201(4).

17. This is simply an inaccurate statement of the law, what the statute states, and what this practice of County and District Courts have, and continue to be, in the 22nd Judicial District.

18. Initially, the People note that they believe that the Court is referencing C.R.S. 16-6-201(3), stating "After disqualifying himself, the judge may require a full hearing upon the issues raised by the affidavits and shall request that another judge conduct the hearing." C.R.S. 16-6-201(3).

    a. C.R.S. 16-6-203(4) states "(4) The disqualified judge shall certify the need for a judge to the chief justice of the Colorado supreme court, who shall assign a judge to the case.", which, while applicable, does not seem to have language even suggesting a hearing would be necessary.

19. Of particular note, 16-6-203(3) states that "the judge **may** require a full hearing upon the issues raised by the affidavits" [emphasis added].

20. The Court must apply the plain language of the statute when interpreting the legislative intent. Here, the word "may" is plainly and commonly understood to be permissive. The Court can elect to have a hearing, or not. Nothing in the plain language of the statute suggests that an order of disqualification would **necessitate** a full hearing upon the issues.

21. The permissive language of the statute is further exemplified by the practice of Court's in the 22nd Judicial District. It is not uncommon for Judges to recuse themselves in various matters,

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especially in a smaller jurisdiction, such as the 22nd Judicial District. While this case involves a request by the People for disqualification, C.R.S. 16-6-201 permits, and actually mandates, that a judge recuse themselves from a case if they have knowledge of facts that warrants such disqualification. "Any judge who knows of circumstances which disqualify him in a case shall, on his own motion, disqualify himself." C.R.S. 16-6-201(2).

22. Other Court's in this jurisdiction routinely follow a similar procedure-the Judge files a notice of recusal, a certificate of recusal is issued, a notice of judicial officer appointment is filed, and a notice of appearance is issued to the parties of record to notify them of the change in judicial officer and location of hearings.

23. In Montezuma County Court case number 2025 T 113, Judge Ian MacLaren disqualified himself to sit as the Judge on that case.

24. Subsequently, as in other disqualification matters, a new judge was summarily appointed, no hearing was held, and the matter proceeded without delay.

25. The rational that the necessity of a hearing warrants denial of the motion is without merit.

THE APPEARANCE OF BIAS OR PREJUDICE NECESSITATES THE JUDGE'S DISQUALIFICATION

26. "Even in case in which judge may be convinced of his or her own impartiality, appearance of bias or prejudice can so undermine litigant's confidence in proceeding, or public's confidence in system, as to require judge's disqualification." Comiskey v. District Court In and For County of Pueblo, 1996, 926 P.2d 539,

27. "Although judge's ruling on legal issue does not require recusal, judge's bias or prejudice may require disqualification, however, when judge's manifestation of hostility or ill will is apparent from motion and affidavits and indicates absence of impartiality required for fair trial." People v. District Court, In and For Eagle County, State of Colo., 1995, 898 P.2d 1058.

28. "Since appearances can be as damaging to public confidence in the courts as actual bias or prejudice, the trial judge must scrupulously avoid any appearance of bias or prejudice." People v. District Court In and For Third Judicial Dist., 1977, 560 P.2d 828.

29. The preceding cases demonstrate that the case law is clear that any appearance of bias warrants the disqualification of the Judge, even if no such bias actually exists.

30. The concerning commentary of Judge MacLaren are detailed in the April 15, 2025 motion to disqualify, but include (but are not limited to)

    a. I'm very disturbed those reports weren't made.

    b. This looks to me to be a slap on the wrist.

    c. The Court would absolutely not accept a plea agreement here

    d. I am not in any sort of a position where I can deny this diversion agreement but I certainly am in a position where I can sit here and express what appears to me to be …what appears to me to be as I said, a slap on the wrist.

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31. Here, the Court, multiple time, comments on the proposed diversion agreement. Further, the court cites to facts that, while incorrectly argued by the public on social media, are false. "There was a report that a juvenile student and a teacher were involved in a sexual relationship" (No such report was ever made, and the Prosecution and Defense knew this fact. The Judge, by design, does not know all the facts known to the Prosecution and Defense.)

32. Not only is there an appearance of impropriety here, the statements of the Judge certainly indicate an actual bias towards the Defendant.

    a. See Motion for Disqualification §e and f "the community puts incredible trust in educators and Mr. Burris is a superintendent to the school district and as such he's at the very top of the food chain in our School District" Sitting here I'm very disturbed that those reports weren't made."

33. The appearance that the Judge has prejudged facts prior to hearing even one piece of testimony in the case gives, at a minimum, the appearance of impropriety.

APPEARANCE OF IMPROPRIETY IS SUFFICIENT

34. Applicable inquiry on motion for recusal is not actual motivation of trial judge, but whether averred facts contained in motion and supporting affidavits establish bias or prejudice, or appearance thereof, as matter of law. Wilkerson v. District Court In and For County of El Paso, 1996, 925 P.2d 1373.

35. As a matter of judicial policy, courts, in ruling on motions to disqualify a trial judge, must take as true facts stated in the affidavit and motion; hence, reviewing court could not consider trial judge's denial of prejudice or his counteraffidavit contesting the allegations in the petition for disqualification. People v. District Court In and For Third Judicial Dist., 1977, 560 P.2d 828.

36. As noted above, the facts in the affidavits must be taken as true. If the affidavits establish bias or prejudice, or even the appearance of bias or prejudice, then the judge should disqualify. It is of no import if the Judge agrees or disagrees with the averments in the affidavits.

WHEREFORE, The People respectfully request that this Court grant the motion to disqualify, that Judge Ian MacLaren be disqualified, and another judicial officer be appointed to hear any motions or other issues in the case.

RESPECTFULLY SUBMITTED on this 14th day of July, 2025

By: ___*/s/ Jeremy E. Reed*_____
Jeremy E. Reed, #39013
District Attorney

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CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 14th day of July, 2025, a true, and accurate copy of this Motion to Reconsider was submitted to defense counsel via ICCES electronic filing system.

By: _____*/s/ Jeremy E. Reed*