

01/12/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 20-0001

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

9 **MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY**
10 **BEFORE THE HONORABLE DEBORAH KIM CHRISTOPHER**

<p>11 STATE OF MONTANA, 12 Plaintiff, 13 v. 14 PAUL LEE ROSS SR., 15 Defendant.</p>	<p>16 Cause No. DC-18-110 17 MOTION FOR DISQUALIFICATION FOR 18 CAUSE</p>
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19 The undersigned hereby moves to disqualify for cause Judge Deborah Kim Christopher.
20 See § 3-1-805, MCA. An Affidavit for Disqualification and Certificate of Good Faith of Counsel
21 have been filed concurrently with this motion.

22 **I. FACTUAL BACKGROUND**

23 Defendant is charged with Burglary in Cause Nos. DC-18-110 and DC-18-208.
24 Defendant is charged with Bail Jumping in DC-19-101 for not appearing for his trial in DC-18-
25 110 and DC-18-208. On September 15, 2020, defense counsel received the State's Witness and
Exhibit list including Judge Deborah Kim Christopher as a witness for the State in DC-19-101.
Judge Christopher was scheduled to preside over Defendant's trial in DC-19-101, DC-18-110,
and DC-18-208 on October 13, 2020.

68

1 On September 28, 2020, Defendant filed a Motion for Disqualification for Cause,
2 Affidavit for Disqualification for Cause, and a Certificate of Good Faith of Counsel. Defendant
3 requested a good cause waiver of the requirement under Montana Code Annotated Section 31-1-
4 805 that the Affidavit for Disqualification for Cause be filed more than thirty (30) days before
5 the date of trial. Defendant requested a waiver because it was impossible for Defendant to
6 comply with the thirty (30) day filing requirement given when the State filed its Witness and
7 Exhibit List. On October 6, 2020, the Montana Supreme Court denied Defendant's request for
8 disqualification because it was not filed more than 30 days before the date set for trial. In the
9 October 6, 2020 Order, the Court also indicated Judge Christopher may not act as a witness in
10 DC-19-101 is she also acts as the presiding judge in the matter.
11

12 The October 13, 2020 Trial was vacated, and on October 28, 2020, Judge Christopher
13 issued a new Jury Trial Setting Order setting the date of the new trial as February 8, 2021. Since
14 that time, the State has not moved to amend its Witness list to remove Judge Christopher as a
15 Witness. Furthermore, the State has indicated it still intends to call Judge Christopher and has
16 begun making it regular practice to call the presiding judge in all cases involving charges of Bail
17 Jumping under MCA 45-7-308. Additionally, Judge Christopher has not recused herself.
18

19 Defendant has also filed a Motion to Dismiss the above matter. Briefing for this motion
20 concluded on September 28, 2020 and the District Court has not yet issued a ruling.

21 **II. JUDGE CHRISTOPHER MUST BE RECUSED FOR CAUSE**

22 Montana Code Annotated § 3-1-805(1) states that "[w]henver a party to any proceeding
23 in any court shall file an affidavit alleging facts showing personal bias or prejudice of the
24 presiding judge, such judge shall proceed no further in the cause." Accordingly, "[t]he affidavit
25 for disqualification must be filed more than thirty (30) days before the date set for hearing or

1 trial.” MCA § 3-1-805(1)(a). Further, “[t]he affidavit shall be accompanied by a certificate of
2 counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not
3 to have been made in good faith if it is based solely on rulings in the case which can be
4 addressed in an appeal from the final judgment.” MCA § 3-1-805(1)(b).

5 Concurrent to this motion, defense counsel has filed an affidavit alleging facts showing
6 personal bias or prejudice of the presiding judge. Defendant has attached a certificate of counsel
7 of record that the affidavit has been made in good faith.

8
9 Judge Christopher being called as a witness against the interests of Defendant requires
10 recusal. Recusal is required under the due process clause when

11 “the probability of actual bias on the part of the judge or
12 decisionmaker is too high to be constitutionally tolerable.” “The
13 inquiring is an objective one. The Court asks not whether the judge
14 is actually, subjectively biased, but whether the average judge in
15 his position is ‘likely’ to be neutral, or whether there is an
16 unconstitutional potential for bias.” Stated another way, “[t]he
17 proper constitutional inquiry is whether sitting on the case . . .
18 would offer a possible temptation to the average . . . judge to . . .
lead him not to hold the balance nice, clear and true.” Under this
objective standard, recusal may be required “whether or not actual
bias exists or can be proved.” The temptation not to hold the
balance nice, clear, and true may arise from “a direct, personal,
substantial, pecuniary interest” in the outcome of the case, or from
other “interests that tempt adjudicators to disregard neutrality.”

19 *Reichert v. State*, 2012 MT 111, ¶ 28, 365 Mont. 92, 278 P.3d 455 (internal citations omitted). In
20 DC-19-101, Judge Christopher is being called to present evidence for the State and act in the
21 interests of the State against Defendant. Judge Christopher testifying against the interests of
22 Defendant is the essence of bias. The reality is if Judge Christopher proceeds as presiding judge
23 on this case, it would require she simultaneously present testimony while making rulings on the
24 admissibility of that testimony or any other evidence proffered throughout the duration of the
25 case.

1 Any attempts to argue a jurist could simultaneously provide evidence against a Defendant
2 while remaining a neutral adjudicator are unconscionable. Once established, the bias and
3 prejudice of Judge Christopher towards Defendant is incurable, and substitution of Judge
4 Christopher is the only appropriate remedy. Judge Christopher's bias and prejudice was
5 established in Defendant's September 28, 2020 Motion for Disqualification for Cause. The
6 State's failure to amend its Witness and Exhibit List to exclude Judge Christopher as a witness or
7 move for her recusal, and Judge Christopher's failure to recuse herself once aware of the
8 conflict, requires Defendant demand her recusal.
9

10 **III. JUDGE CHRISTOPHER'S RECUSAL IS REQUIRED IN ALL THREE**
11 **MATTERS**

12 Because of the marked connection between the events in DC-18-110 and DC-18-208, and
13 Judge Christopher's pending testimony in DC-19-101, recusal is required in all three matters.
14 Defendant was charged for Bail Jumping because he is alleged to have missed his trial in DC-18-
15 110 and DC-18-208. Any observations Judge Christopher might make about his conduct during
16 those earlier matters would then be used by her, against Defendant, during her testimony in DC-
17 19-101. Once it has been established Judge Christopher is biased or prejudiced against the
18 Defendant in one matter, it would be impossible for an objective observer to expect any jurist to
19 be able to compartmentalize their bias or prejudice. This is especially true for contemporaneous
20 proceedings. Judge Christopher's bias and prejudice against Defendant in DC-19-101 flows from
21 DC-18-110 and DC-18-208, and the actual bias and potential for bias is too high to permit Judge
22 Christopher to remain as presiding judge on any of the three matters.
23

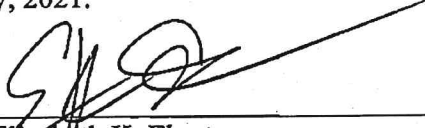
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1 **IV. CONCLUSION**

2 For the reasons stated above, Defendant respectfully requests that Judge Christopher
3 recuse herself from this case. If Judge Christopher does not voluntarily recuse herself, Defendant
4 moves for the matter to be referred to the Montana Supreme Court and for Judge Christopher to
5 be disqualified for cause.


6 Respectfully submitted this 6th day of January, 2021.

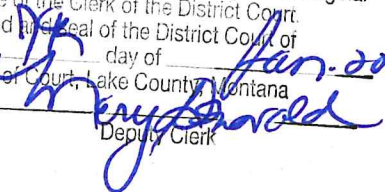
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8 _____
9 Elizabeth K. Ehret
10 Attorney for Defendant

11 **CERTIFICATE OF SERVICE**

12 The undersigned certifies that on the 6th day of January, 2021, a true and accurate copy
13 of the foregoing Motion for Disqualification for Cause was delivered to the following:

14 **Delivery Type: Hand Delivery**
15 Benjamin R. Anciaux
16 Lake County Attorney's Office

17 
18 _____
19 Office of State Public Defender

20 STATE OF MONTANA } ss
21 County of Lake }
22 I hereby certify that the document to which this certificate is
23 affixed is a true, correct and compared copy of the original
24 on file in the office of the Clerk of the District Court.
25 WITNESS my hand and seal of the District Court of
Lake County this 6th day of Jan. 2021
Lyn Fricker, Clerk of Court, Lake County, Montana
Court Seal By 
Deputy Clerk