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MONTANA SEVENTH JUDICIAL DISTRICT COURT, PRAIRIE COUNTY

STATE OF MONTANA,) Cause No.: DC-40-2023-1
)
Plaintiff,)
) MOTION AND SUPPORTING BRIEF
vs.) FOR DISQUALIFICATION OF
) PRESIDING JUDGE
STERLING GLENN BROWN,)
)
Defendant.)

COMES NOW, Defendant Sterling Brown, by and through counsel of
record, Lance P. Jasper and Jenna P. Lyons of the law firm Reep, Bell &
Jasper, P.C., and Matthew Hayhurst and Forrest Crawl, of the law firm Boone
Karlberg, P.C., and respectfully submits his Motion for Disqualification of the

1 Honorable Olivia Rieger (“Judge Rieger”).

2 For the reasons articulated herein, Sterling Brown (“Sterling”)
3 respectfully requests that a district judge, assigned by the Montana Supreme
4 Court under Mont. Code Ann. § 3-1-805, consider this motion, and disqualify
5 Judge Rieger. The matter should then be assigned to a new judge.¹

6 This brief is supported by the *Affidavit of Sterling Brown*, the *Affidavit of*
7 *Lance P. Jasper*, and the *Declaration of James C. Nelson* (paragraphs 25–
8 32) filed contemporaneously herewith.

9 **I. INTRODUCTION.**

10 This case contains several unique facts and circumstances rendering
11 this Motion appropriate. Some of the salient facts include:

- 12 1. Judge Rieger presided over the highly publicized trial of Sterling’s
13 codefendant Jake Burghduff (“Mr. Burghduff”);
- 14 2. Judge Rieger presided over the prior dissolution proceedings
15 between Sterling’s wife Katherine Bivens (“Ms. Bivens”) and the
16 alleged victim in this case, Isaac Carrier (“Mr. Carrier”);
- 17 3. Judge Rieger made numerous highly prejudicial statements
18 throughout Mr. Burghduff’s trial and sentencing and presided over

20 ¹ This should also occur in a new venue, for reasons articulated in Sterling’s Motion for Change of Venue. Sterling incorporates the contents of that motion by reference herein. See Motion and Supporting Brief for Change of Venue, attached.

1 parties and witnesses who made several highly prejudicial
2 statements; and

3 4. All of this occurred in the 5th smallest county in Montana with a
4 population of only 1,112.

5 Given the above circumstances, without limitation, the appearance of
6 impartiality has arisen where a reasonable person would question the
7 impartiality of the judge, particularly if Sterling's criminal case is tried
8 anywhere near Prairie County. Montana law does not require a showing of
9 actual bias or prejudice to require judicial disqualification. Instead,
10 disqualification is required when, as here, the judge's impartiality might
11 reasonably be in question. Accordingly, Sterling reluctantly but respectfully
12 moves for disqualification of Judge Rieger from this case under Mont. Code
13 Ann. § 3-1-805.

14 **a. Background.**

15 Sterling is charged with having committed the following offenses: (1)
16 one count deliberate homicide under Mont. Code Ann. § 45-5-102; (2) one
17 count arson under Mont. Code Ann. § 45-6-103; and (3) three counts criminal
18 endangerment under Mont. Code Ann. § 45-5-207(1). Doc. 36, *Second*
19 *Amended Information*, DC-40-2023-1 (Sept. 22, 2023). His charges stem
20 from the death of Mr. Carrier on January 23, 2023, in Fallon, Montana.

1 Sterling's wife, Ms. Bivens, is Mr. Carrier's ex-wife who shared in raising a
2 child with Mr. Carrier and was involved in a serious and contentious family
3 law proceeding.

4 Sterling was charged with Mr. Burghduff, who was tried for deliberate
5 homicide in August 2023 and found guilty. Judge Rieger presided over Mr.
6 Burghduff's entire case and presides over Sterling's case now. As detailed
7 below, because of the unique facts surrounding Sterling's case and upcoming
8 trial, Judge Rieger's disqualification is needed because her impartiality could
9 be reasonably questioned due to an appearance of bias.

10 **b. Mr. Carrier and Ms. Biven's Dissolution of Marriage and**
11 **Establishment of a Final Parenting Plan proceeding.**

12 From March 15, 2021, to December 14, 2022, Judge Rieger presided
13 over Mr. Carrier and Ms. Biven's dissolution and parenting proceedings. Civil
14 ROA Summary, No. DR-21-007, attached as **Exhibit 1** of Jasper Affidavit.
15 Over the course of the 21 months Judge Rieger presided over the
16 proceeding, a final decree of dissolution of marriage was entered, an order of
17 protection against Mr. Carrier was entered, and filings seeking to suspend Mr.
18 Carrier's parenting of his and Ms. Bivens' child due to allegations of abuse
19 pending a show cause hearing were brought.¹ See *generally* **Exhibit 1**; Final

20 ¹ Although Judge Rieger was the presiding judge during much of Mr. Carrier and Ms. Bivens' dissolution and parenting proceeding, the Honorable Katherine Bidegaray signed the order of protection against Mr. Carrier. See TRO, attached as **Exhibit #**.

1 Decree of Dissolution of Marriage, No. DR-21-007, attached as **Exhibit 2**;
2 Order Adopting Stipulated Amended Parenting Plan, No. DR-21-007,
3 attached as **Exhibit 3**.

4 In short, Judge Rieger was the presiding judge in a prior matter
5 involving several serious and contentious events between Sterling's wife and
6 the alleged murder victim. Now, those very events are central to the
7 prosecution's theory against Sterling. Indeed, it is anticipated that the
8 prosecution will present evidence of these proceedings as evidence of
9 Sterling's alleged motive to kill Mr. Carrier. Although Judge Rieger recused
10 herself from the dissolution proceeding in December 2022, the knowledge
11 she gained from presiding over the dissolution and parenting proceeding
12 remains. Order Inviting Judge to Assume Jurisdiction, No. DR-21-007 (Mont.
13 7th Jud. Dist. Dec. 15, 2022), attached as **Exhibit 4**.

14 **c. Mr. Burghduff's Trial.**

15 A three-day jury trial of Sterling's codefendant, Mr. Burghduff, occurred
16 August 21 to 23, 2023, on the charge of deliberate homicide under Mont.
17 Code Ann. § 45-5-102(1)(b) with Judge Rieger presiding. In Mr. Burghduff's
18 trial, the State relied on the principle of accountability as stated in Mont. Code
19 Ann. §§ 45-5-301 and 45-5-302 to argue that Mr. Burghduff was guilty of
20 deliberate homicide. *See generally* **Exs. 5–7**. Ultimately, Mr. Burghduff was

1 found guilty of deliberate homicide by a Prairie County jury. Burghduff Verdict
2 at 1, Aug. 23, 2023, No. DC-23-002, attached as **Exhibit 8**. Throughout Mr.
3 Burghduff’s trial, all participants—the State, Mr. Burghduff’s counsel,
4 witnesses, and the Court—referenced one individual who purportedly
5 committed the offense of deliberate homicide for which Mr. Burghduff
6 allegedly contributed to and was accountable for—Sterling Brown. See
7 *generally Exs. 5–7*.

8 During the three-day trial before Judge Rieger, Sterling’s name was
9 mentioned approximately 430 times. See **Exhibit 9**. Sterling was blamed for
10 the crime by almost everyone, either directly or indirectly.

11 Blaming Sterling for the charged offenses began in opening statements.
12 He was declared responsible for orchestrating and committing the killing of
13 Isaac Carrier:

14 “He was going to go help his friend Sterling Brown hurt
15 someone or something.” *State’s Opening Statement, Ex. 5* at
39:15–16.

16 “And that the aggravated assault or assault with a weapon
17 committed by Sterling Brown resulted in the death of Isaac
Carrier.” *State’s Opening Statement, Ex. 5* at 49:21–24.

18 “Throughout this trial, you’re going to be presented with
19 evidence that shows Sterling Brown, and Sterling Brown
20 alone, is legally responsible for the horrific and tragic death of
Isaac Carrier. It’s going to show that Sterling Brown had a
motive to kill Isaac.” *Mr. Burghduff’s Opening Statement, Ex.
5* at 50:12–17.

1 “And I cannot stress this enough. This is not the trial of Sterling
2 Brown, the man who actually killed Isaac Carrier. That trial,
3 the trial of Sterling Brown, is coming, and that jury will have
4 the opportunity to decide his guilt and carry out justice.” *Mr.*
5 *Burghduff’s Opening Statement*, **Ex. 5** at 53:19–23.

6 References to Sterling’s assumed guilt continued throughout the
7 presentation of evidence. Given the State’s theory, the Court instructed that
8 “[Mr. Burghduff] is charged with the offense of Deliberate Homicide for being
9 legally accountable for the conduct of another, Sterling Brown, committing the
10 offense of aggravated assault and/or assault with a weapon against Isaac
11 Carrier.” *The Court*, **Ex. 6** at 229:15–20. Then the State, Mr. Burghduff’s
12 counsel, and several witnesses continuously stated that Sterling was
13 responsible for Mr. Carrier’s death:

14 “And yes, the facts show, through more investigation, that Mr.
15 Brown indicated at some point that it was going to be Isaac
16 Carrier.” *State*, **Ex. 6** at 238:24–239:1.

17 “I asked him if he was with Sterling Brown when he went in
18 and committed the murder.” *Witness Agent Bradley Tucker*,
19 **Ex. 6** at 402:3–4.

20 “I said, because the deal, you don’t have any reason to kill this
individual, but Sterling did.” *Witness Agent Bradley Tucker*,
Ex. 6 at 445:5–6.

“The State has chosen to charge Mr. Brown with simply
homicide, not under the felony murder rule. There is no
allegation in Mr. Brown’s case that he intended to do anything
other than kill Mr. Carrier. This can be seen through those
initial text messages that are in evidence, your Honor,

1 between Mr. Brown and Katie Bivens. There could not have
2 been an agreement to the predicate felony because Mr.
Brown never intended to commit the predicate felony. He only
intended to commit homicide.” *Defense*, **Ex. 7** at 498:3–11.

3 “I think it’s undisputed at this point, your Honor, that in the
4 course of the commission of these felonious acts—the
5 aggravated assault or the assault with a weapon—another
6 person, Sterling Brown, caused the death of Isaac Carrier.”
State, **Ex. 7** at 516:3–10.

7 “[Mr. Burghduff’s] being charged with being accountable for
Sterling Brown’s conduct and causing the offense of assault
8 with a weapon.” *State*, **Ex. 7** at 624:22–24.

9 Blaming Sterling for the offenses culminated during closing arguments:

10 “In this case, you may find from these text messages that
Sterling Brown is asking his friend, Jacob Burghduff, to go do
11 something. To go hurt somebody. And c- is there any other
rational conclusion when you watch this video that he has said
12 he’s seen indicates on the text messages that once seen and
he’s still confused. From this video, can there really be any
13 doubt about the type of harm that Mr. Brown was asking Mr.
Burghduff to be involved in. Is the harm that’s caused to Isaac,
14 the final harm that’s caused with Isaac, his horrific death, the
brutality of his death, is it the same type of brutality that you
see in this video?” *State’s closing*, **Ex. 7** at 641:5–17.

15 “The person who made all the important choices that
ultimately caused the death of Isaac Carrier is Sterling Brown.
16 Sterling Brown made the choice to drive the route they went.
Sterling Brown was the one who chose to stop in Baker,
17 Montana. Sterling Brown was the one who chose that a gas
can needed for what he, and he alone, had planned. Sterling
18 Brown was the one who chose to turn his vehicle towards
Fallon, Montana. Sterling Brown was the one chose to bring a
19 Colt 1911 pistol with him. Sterling Brown was the one who
chose to park the vehicle around the corner, a block away,
20 where Jake couldn’t see what Sterling was doing. Sterling

1 Brown was the one who chose to grab that gun and grab that
2 gas can and head to Isaac's apartment. And when Sterling
3 Brown took off, on foot, alone, to Isaac's apartment, Sterling
Brown and only Sterling Brown was the one making choices."
Defense's closing, Ex. 7 at 654:20–655:10.

4 "And most importantly, Sterling Brown was the one who chose
5 to shoot Mr. Carrier. I trust that our justice system will hold
6 Sterling Brown accountable for the actions that he did, for the
7 pain that he's caused, and will bring justice for Isaac Carrier.
But this, here, is not the trial of Sterling Brown. Sterling Brown
had the motive to kill Isaac Carrier. And Katie Bivens, she had
the ultimate motive." *Defense's closing, Ex. 7* at 655:11–19.

8 "This is not a robbery. This is not someone who has a bar
9 fight, and someone accidentally dies. Sterling Brown
committed the offense of deliberate homicide." *Defense's*
closing, Ex. 7 at 666:24–667:2.

10 Judge Rieger presided over every part of the trial. Since every lawyer
11 and nearly every witness blamed Sterling for the murder, the Court likewise
12 was called upon to address Sterling and his alleged role even after the trial
13 concluded.

14 **d. Mr. Burghduff's Sentencing.**

15 During Mr. Burghduff's sentencing, Judge Rieger made several
16 comments that presuppose Sterling's guilt:

17 "The State-I, I understand the Carrier family, but I also
18 understand we're not here for Sterling Brown who was the
19 aggressor as even alleged by the State." See Burghduff
Sentencing 48:21–23, Oct. 17, 2023, No. DC-23-002,
attached as **Exhibit 10**.

20 "But the nature and the circumstances of this offense are that

1 you went with Sterling Brown, proven to the Court. Even
2 though the jury found you guilty of deliberate homicide – which
3 is what you are here to be sentenced for. You got in a vehicle
with Sterling Brown who, clearly, had a motive to harm Isaac
Carrier.” **Ex. 10** at 82:3–8.

4 “If you were Sterling Brown sitting here, nothing, no sentence
5 could provide real retribution to the Carrier family for a life that
they lost that seems to be amazing.” **Ex. 10** at 86:3–6.

6 Judge Rieger also made comments during Mr. Burghduff’s sentencing
7 regarding the family law proceeding involving Mr. Carrier and Ms. Bivens that
8 she presided over for 21 months:

9 The Court previously indicated that during the course of the
10 parenting matter, this Court at least found no viable claim
11 against Isaac Carrier, that he was harming the child, which
12 served as apparently Sterling Brown’s alleged motive to take
13 his life. And Ms. Paddock is right. The choices of, or the
alleged choices of, Sterling Brown to usurp the judicial system
in considering the factors in which someone who sits in my
chair considers when it comes to parenting, is an assault by
Sterling Brown on the judicial system itself and the process of
civil and domestic relations matters.

14 **Ex. 10** at 86:7–17.

15 During Mr. Burghduff’s sentencing, Sterling’s name was mentioned
16 approximately 64 times. See **Ex. 9**. Judge Rieger’s statements blaming
17 Sterling, and the statements made by the parties and witnesses in the action
18 Judge Rieger presided over, were heard by a massive audience and a
19 significant swath of the local population. Over 200 people logged in and
20 observed portions of Mr. Burghduff’s trial over the Zoom streaming. Dozens

1 of others appeared in person. See **Ex. 9**. The jury comprised another dozen.
2 Everyone heard that Sterling was guilty.

3 **e. Prairie and Dawson Counties.**

4 As an important public official, Judge Rieger is well known in Prairie
5 County. It has a small population. In fact, it is the 5th smallest county by
6 population among the 56 counties in Montana. See *Montana Demographics*,
7 Montana Counties by Population (last visited May 8, 2024),
8 https://www.montana-demographics.com/counties_by_population. As of July
9 1, 2023, Prairie County had approximately 1,112 residents. *United States*
10 *Census Bureau*, Prairie County, Montana (last visited May 8, 2024),
11 <https://www.census.gov/quickfacts/fact/table/prairiecountymontana#>. Of that
12 number, approximately 878 residents were over the age of 18 years old. *Id.*
13 Less than 500 households exist in Prairie County, with an average of 2.59
14 persons per household. *Id.* Although Prairie County is a rural community, it is
15 well connected and has ready access to the news. Indeed, approximately
16 84.3% of households had broadband internet subscriptions. *Id.* In this vein,
17 many individuals did indeed log on to and observe the Zoom proceedings of
18 Jake Burghduff's trial and sentencing. See **Ex. 13**.

19 Prairie County's small population size reflects its violent crime statistics.
20 Since January 1, 2014, Sterling's and Mr. Burghduff's deliberate homicide

1 charges are the only deliberate homicide charges in Prairie County. Prairie
2 County District Court Cases Charges and Findings, attached as **Exhibit 11**.

3 During that same time period, the only violent crimes included:

- 4 (1) assault with a weapon (five times);
5 (2) partner or family member assault (five times);
6 (3) assault on a peace officer (twice);
7 (4) sexual intercourse without consent (once); and
8 (5) sexual assault (once).

9 See **Ex. 11**. The majority of Prairie County's charged crimes since 2014 have
10 been drug and alcohol related or property crimes. See *generally* **Ex. 11**.

11 Dawson County, while more populated than Prairie County, similarly
12 has a small population. As of July 1, 2023, Dawson County had
13 approximately 8,810 residents. *United States Census Bureau*, Dawson
14 County, Montana (last visited May 8, 2024), [https://www.census.gov/
15 quickfacts/fact/table/dawsoncountymontana/AGE295222](https://www.census.gov/quickfacts/fact/table/dawsoncountymontana/AGE295222). Of that number,
16 approximately 6,924 residents were over the age of 18 years old. *Id.* Less
17 than 3,775 households exist in Dawson County, with an average of 2.25
18 persons per household. *Id.* Similar to Prairie County, although Dawson
19 County is a mostly rural community, approximately 87% of households have a
20 broadband internet subscription. *Id.*

Finally, violent crime in Dawson County, while more common than
Prairie County, is still uncommon. From 2010 to 2022, deliberate homicide or

1 mitigated deliberate homicide was charged only four times, with only one
2 charge from 2015 to 2022. See Workbook: DOC Public Dashboard, Offense
3 Counts by Offense Classification and County: Dawson County, Violent
4 Offenses (last viewed May 20, 2024), https://dataportal.mt.gov/t/COR/views/DOCPublicDashboard/OffenseCount?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y.

8 Consequently, given the size of these counties, anything Judge Rieger
9 says or does carries special weight by virtue of her position as District Court
10 judge in each county.

11 **f. News and Media Impact.**

12 Understandably, given the size of Prairie and Dawson Counties and the
13 small number of violent crimes that occur in such counties, Mr. Carrier's
14 death and the resulting criminal investigation has been significantly covered
15 in the media. In less than 18 months since the crime occurred, over 35
16 articles have been written, published, and distributed about the case and
17 Sterling's alleged involvement. See **Ex. 12**. Articles have appeared in several
18 different types of media, including nationwide sources like the Daily Beast,
19 Ground News, EIN Presswire and statewide sources like NBC Montana and
20 the Billings Gazette. But the most common sources publishing articles are

1 local media outlets. For example, the Glendive Ranger Review, Ekalaka
2 Eagle, Terry Tribune, and Miles City Star—all media outlets within
3 approximately a two-hour drive of Fallon, Montana—account for nearly half of
4 all news articles published and distributed regarding Mr. Carrier’s death. See

5 **Ex. 12.**

6 Several local media articles regarding Mr. Carrier’s death contain
7 statements presupposing Sterling’s guilt:

8 “Court documents state Burghduff said Brown did not
9 explicitly say what he was planning to do, but said he was
10 going to ‘take care of’ Carrier and ensure his son would not
11 be returned to his custody. Carrier was killed a couple of days
12 prior to a custody hearing between Carrier and Bivens.”
13 *Prosecutors move for amended charges in Fallon homicide*
14 *case, defense moves to dismiss*, Glendive Ranger Review
15 (Apr. 1, 2023).

16 “The defense, meanwhile, has held that Brown alone is
17 responsible for Carrier’s death and that while Burghduff went
18 with him to Fallon that night, he did not participate and did not
19 know what Brown’s intentions were.” *Jury finds Jake*
20 *Burghduff guilty of deliberate homicide under the state’s*
felony murder rule, Glendive Ranger Review (Aug. 24, 2023).

“‘Sterling is not a friend of Jake’s and never was. Sterling is a
predator that preyed on Jake along with the Carrier family, and
my heart goes out to their whole family. Everyone is suffering
because of Sterling’s actions,’ said Burghduff’s father Lex
Burghduff.” *Fallon homicide defendant Jake Burghduff*
receives a 15-year sentence to the Department of Corrections
with 10 years suspended, Terry Tribune (Oct. 19, 2023).

Mr. Burghduff’s and Sterling’s trials were initially scheduled to be held in

1 Prairie County at the Prairie County Courthouse. Because of the significant
2 news and media interest in the trials, however, the location was changed to
3 the larger Dawson County Courthouse. The Glendive Ranger Review
4 reported in July 2023, that the Prairie County Clerk of Court explained “the
5 biggest concern [with holding the trial at the Prairie County Courthouse] is
6 finding space for the anticipated crowd. As the case has generated a lot of
7 interest from people both directly and indirectly affected[.]” *Trial for Fallon*
8 *homicide suspect gets moved back, officials discuss logistics*, Glendive
9 Ranger Review (July 5, 2023) (emphasis added).

10 In short, media coverage amplifies the potential for prejudice. Because
11 the cases have been widely projected, the risk of appearance of bias
12 reasonably questioning Judge Rieger’s impartiality greater increases.

13 **II. TO GUARANTEE STERLING A FAIR AND IMPARTIAL TRIAL,**
14 **JUDGE RIEGER’S DISQUALIFICATION IS NECESSARY.**

15 **a. Motion for Disqualification Legal Standards.**

16 “It is axiomatic that a fair trial in a fair tribunal is a basic requirement of
17 due process.” *State v. Dunsmore*, 2015 MT 108, ¶ 11, 378 Mont. 514, 347
18 P.3d 1220 (citation omitted). This “includes the requirement that any judge
19 who is biased or partial with regard to a particular matter or party be
20 disqualified from hearing the case.” *Id.* Actual bias is not required, however.
Draggin’ Y Cattle v. Junkermier, 2017 MT 125, ¶ 35, 387 Mont. 430, 395 P.3d

1 497. Instead, under Montana Code of Judicial Conduct Rule 2.12(A), to
2 maintain the dignity of judicial office, “[a] judge shall disqualify himself or
3 herself in any proceeding in which the judge’s impartiality might reasonably
4 be questioned.” See *Draggin’ Y Cattle Co. v. Addink*, 2016 MT 98, ¶ 24, 383
5 Mont. 243, 371 P.3d 970 (emphasis added). Finally, a court’s “inquiry into
6 disqualification requires an objective examination of the circumstances
7 surrounding” the potential disqualification and “an accurate representation” of
8 the Montana Code of Judicial Conduct. *Addink*, ¶ 10; *Dunsmore*, ¶ 10.

9 **b. THE DISQUALIFICATION OF JUDGE RIEGER IS NECESSARY**
10 **BECAUSE HER IMPARTIALITY MIGHT REASONABLY BE**
11 **QUESTIONED DUE TO AN APPEARANCE OF BIAS.**

12 “An independent, fair, and impartial judiciary is indispensable to our
13 system of justice.” M. C. Jud. Cond., Preamble [1]. Montana Code Annotated
14 § 3-1-805 “is the statutory remedy which protects a party’s fundamental
15 interest in his or her trial proceeding in front of a fair and impartial tribunal.” *In*
16 *re Estate of Boland*, 2019 MT 236, ¶ 36, 397 Mont. 319, 450 P.3d 849. When
17 a motion seeking disqualification is brought under § 3-1-805, the Montana
18 Code of Judicial Conduct, particularly Rule 2.12, guides the determination of
19 whether a judge should be replaced. *Id.* ¶ 37.

20 “The 2008 Montana Code of Judicial Conduct ‘establishes standards for
the ethical conduct of judges and judicial candidates.’” *Reichert v. State*, 2012

1 MT 111, ¶ 41, 365 Mont. 92, 278 P.3d 455 (quoting M. C. Jud. Cond.,
2 Preamble [3]). Section 3-1-805 and Rule 2.12 govern judicial disqualification.
3 See *Dunsmore*, ¶ 12; *Reichert*, ¶¶ 41–51. Rule 2.12(A) states “[a] judge shall
4 disqualify himself or herself in any proceeding in which the judge’s impartiality
5 might reasonably be questioned.” (emphasis added). “Impartiality,” under the
6 Code is an “absence of bias or prejudice in favor of, or against, particular
7 parties or classes of parties, as well as maintenance of an open mind in
8 considering that may come before a judge.” M. C. Jud. Cond., Terminology,
9 “Impartiality.”

10 Finally, Rule 2.12(A) “requires no separate showing of actual bias or
11 prejudice. Reasonable questions regarding a judge’s ability to remain
12 impartial inherently raise questions about the party’s right to a fair tribunal.”
13 *Draggin’ Y Cattle v. Junkermier*, 2017 MT 125, ¶ 35, 387 Mont. 430, 395 P.3d
14 497. The ultimate question under a Rule 2.12(A) analysis is whether the
15 judge’s “impartiality might reasonably be questioned,” which requires an
16 “objective examination of the circumstances surrounding [the judge’s]
17 potential disqualification.” *Id.* ¶¶ 16, 25 (citations and quotations omitted).

18 **1. Case law supports disqualification.**

19 While there is scarce Montana case law discussing the merits of a
20 motion to disqualify, the Montana Supreme Court found allegations sufficient

1 to warrant disqualification in *Draggin' Y Cattle v. Junkermier*, 2017 MT 125.
2 There, the Court affirmed the disqualification of a district court judge after
3 finding that the judge's impartiality might reasonably be questioned. *Id.* ¶ 25.
4 The parties in *Junkermier* had entered into a settlement agreement and
5 stipulation for entry of judgment without one party's insurer's participation or
6 authorization. *Id.* ¶ 6. When the insurer contested the reasonableness of the
7 settlement, the presiding judge denied the challenge, concluded the
8 stipulated agreement was reasonable, and entered judgment. *Id.*

9 On appeal, the insurer asserted the presiding judge had a conflict of
10 interest stemming from a complaint by his former court report filed against
11 him. *Id.* ¶ 7. In fact, the presiding judge had individually entered into a
12 stipulated settlement with his former court reporter, without the participation
13 and authorization of his insurer, which resulted in the judge's insurer
14 contesting the reasonableness of the settlement. *Id.* ¶ 24–25. The Supreme
15 Court found that the presiding judge's individual settlement should have been
16 disclosed to the parties because such circumstances could potentially cause
17 the judge's impartiality to reasonably be questioned. *Id.* Importantly, the
18 *Junkermier* Court explained that the judge's involvement and experience with
19 a similar issue constituted a cause to question impartiality, and thus,
20 disqualification was necessary. *Id.*

1 Here, Judge Rieger's involvement and experience with Mr. Carrier and
2 Ms. Bivens' dissolution and parenting proceedings and Sterling's
3 codefendant's trial and sentencing reasonably raise questions about her
4 ability to be impartial. Therefore, Judge Rieger's disqualification is the only
5 appropriate remedy.

6 Additionally, judges have been disqualified in situations parallel to this
7 case. The most factually similar case is *People v. Gibson*, where the
8 Michigan Court of Appeals ruled that the presiding judge should have been
9 disqualified based on statements made at a codefendant's trial because the
10 statements demonstrated that the Judge had prejudged the other
11 codefendant's guilt. 90 Mich. App. 792, 282 N.W.2d 483 (Mich. App. 1979). In
12 *Gibson*, codefendants Peete and Gibson were charged with armed robbery
13 and tried separately, with Peete tried first, due to the existence of Peete's
14 confession, which inculpated Gibson. *Id.* at 794, 282 N.W.2d at 485. The
15 Michigan Court of Appeals explained that due to the unique circumstances
16 surrounding the proceedings, the trial judge was required to make findings
17 and statements at Peete's trial that would include references to Gibson. *Id.* at
18 797, 282 N.W.2d at 486. Accordingly, "the 'prejudgment' was necessitated by
19 the exigencies of the circumstances." *Id.*

20 Just as in *Gibson*, Judge Rieger, due to the exigencies of the

1 circumstances, was required to make statements prejudging Sterling for Mr.
2 Burghduff's trial. Because the trials were severed, like in *Gibson*, and Mr.
3 Burghduff's trial focused on primarily Sterling's responsibility for Mr. Carrier's
4 death and his accountability for such alleged actions, Judge Rieger had to
5 make comments presupposing Sterling's guilt during Mr. Burghduff's trial and
6 sentencing. Consequently, as the court held in *Gibson*, because of the unique
7 circumstances that exist in presiding over separate codefendant trials where
8 requisite findings and statements are required of the presiding judge
9 presupposing guilt of the untried codefendant, Judge Rieger's disqualification
10 is appropriate and necessary. A miscarriage of justice will be the unfortunate
11 and inevitable result if Judge Rieger remains as the presiding judge.

12 Additionally, other courts have disqualified judges who presided over an
13 earlier disposition of a codefendant because of comments made
14 presupposing a defendant's guilt and because the information learned during
15 the codefendant's case caused a risk of bias impacting the judge's ability to
16 be impartial. See *Brent v. State*, 63 Md. App. 197, 492 A.2d 637 (Md. Spec.
17 App. 1985) (holding the trial judge should have recused himself because he
18 learned information implicating the defendant from presiding over the
19 codefendant's proceedings); *In re George G.*, 494 A.2d 247 (Md. Spec. App.
20 1985) (holding the judge who presided over two codefendants' trials should

1 have recused himself when he made comments that projected an
2 appearance of bias and caused “an irreparable taint on the proceedings”);
3 *People v. Robinson*, 310 N.E. 2d 652 (Ill. App. 1st Dist. 1974) (holding
4 disqualification was appropriate when the presiding judge made statements
5 presupposing a defendant’s guilt during their codefendant’s trial).

6 Finally, courts have recognized the danger of a presiding judge’s
7 appearance of bias. In *North American Title Company, Inc. v. Superior Court*,
8 the California Court of Appeals ruled that statements made by a judge about
9 the parties before the matters were properly before the judge could result in
10 an appearance of bias. 308 Cal. Rptr. 3d 769, 775 (Cal. App. 5th Dist. 2023),
11 as modified on denial of reh’g (June 13, 2023). The Court identified the
12 appropriate question for addressing disqualification was not whether the
13 judge was actually biased, but “how an objective, reasonable person would
14 view the judge’s ability to be impartial.” *Id.* at 796 (cleaned up). Ultimately, the
15 Court held that a “reasonable member of the public could entertain doubts the
16 trial judge retained an appearance of being impartial.” *Id.* 799.

17 Accordingly, viewing Judge Rieger’s ability to be impartial as an
18 objective, reasonable person would under the circumstances, a Prairie
19 County resident could entertain doubts that she can retain an appearance of
20 being impartial.

1 **2. The unique facts of this case support disqualification.**

2 Applying these well-settled principles here, an objective examination of
3 the circumstances surrounding Judge Rieger's potential disqualification
4 confirms that her impartiality could reasonably be questioned due to an
5 appearance of bias. See *Junkermier*, ¶ 25. As former Glacier County Attorney
6 and retired Montana Supreme Court Justice James C. Nelson stated in his
7 Declaration:

8 [E]ven the appearance of bias or impropriety can significantly
9 degrade the public trust in the judicial system, which is critical to
10 the system's continued functioning and viability. This is
11 especially true in the area of criminal defense, where a person's
12 life and/or liberty is at stake.

13 Declaration of James C. Nelson at ¶ 26. Under the unique circumstances of
14 this case Judge Rieger's appearance of bias reasonably places her
15 impartiality in question. *Id.* at ¶ 27. Only upon reviewing Mr. Burghduff's trial
16 and sentencing transcripts and preparing for Sterling's trial did the risk of an
17 appearance of bias become evident. Several independent, and related,
18 reasons support Judge Rieger's disqualification.

19 First, Judge Rieger presided over a contentious dissolution and
20 parenting proceeding for 21 months involving individuals directly at issue or
involved in Sterling's prosecution. See *generally* **Ex. 1**. Regardless of her
direct involvement in every portion of Mr. Carrier and Ms. Bivens' dissolution

1 and parenting proceeding, Judge Rieger was involved in and has intimate
2 knowledge of facts and details regarding this issue, which is directly related to
3 Sterling's case and upcoming trial. See *Junkermier*, ¶ 25. Furthermore,
4 because Mr. Carrier and Ms. Bivens' prior relationship and court proceedings
5 will be a key component in Sterling's trial, Judge Rieger's prior involvement
6 raises a reasonable question about her ability to be impartial toward Sterling.

7 Second, Judge Rieger presided over Mr. Burghduff's trial and
8 sentencing where Sterling was blamed for Mr. Carrier's death, mentioned by
9 name approximately 500 times, and had several comments made by the
10 parties and witnesses labeling Sterling guilty. See **Ex. 9**. Judge Rieger
11 herself, because of the circumstances surrounding these cases, made
12 several comments from which her impartiality might reasonably be
13 questioned. See *supra* at 8–9. It is likely, if Judge Rieger remains as
14 presiding judge, that record bias will be the only result.

15 Although those facts alone support a reasonable questioning of Judge
16 Rieger's impartiality toward Sterling, the specific comments she made during
17 sentencing of Mr. Burghduff further demonstrate that her impartiality may be
18 reasonably questioned warranting disqualification:

19 "But the nature and the circumstances of this offense are that
20 you went with Sterling Brown, proven to the Court. Even
though the jury found you guilty of deliberate homicide – which
is what you are here to be sentenced for. You got in a vehicle

1 with Sterling Brown who, clearly, had a motive to harm Isaac
2 Carrier.” **Ex. 10** at 82:3–8.

3 “If you were Sterling Brown sitting here, nothing, no sentence
4 could provide real retribution to the Carrier family for a life that
5 they lost that seems to be amazing.” **Ex. 10** at 86:3–6.

6 This is especially true when paired with the fact that the rhetoric
7 surrounding Mr. Burghduff’s entire trial was: (1) *Sterling murdered Mr. Carrier,*
8 *but Mr. Burghduff was accountable* (prosecution); or (2) *Sterling murdered*
9 *Mr. Carrier, Mr. Burghduff was merely present* (defense). A multi-day trial,
10 with greater than 200 attendants and several media outlets closely following,
11 has already occurred with Judge Rieger presiding where Mr. Burghduff was
12 found guilty and Sterling was labeled as guilty, and in some instances even
13 presumed guilty.

14 Judge Rieger’s statements relating to Sterling’s guilt during Mr.
15 Burghduff’s trial and sentencing create unfavorable prejudice that cannot be
16 removed. Referencing the dissolution and parenting plan proceeding and the
17 Court’s findings in that proceeding during Mr. Burghduff’s sentencing could
18 cause a Prairie County juror to reasonably question Judge Rieger’s
19 impartiality toward Sterling. See **Ex. 10** at 86:7–17. Sterling’s “guilt has been
20 taken for granted—presumed, actually—by Judge Rieger, the prosecutor, and
the community,” which “has turned [his] presumption of innocence on its
head.” Nelson Declaration at ¶ 29.

1 Third, the size and characteristics of Prairie County increase the chance
2 that an appearance of bias leading to reasonable questions about Judge
3 Rieger's impartiality exists. With less than 880 eligible jurors and zero
4 homicide charges (except relating to Isaac Carrier) over the past ten years,
5 Judge Rieger's actions and involvement in Mr. Burghduff's trial and
6 sentencing are well-known and carry significant weight. As the 5th smallest
7 county in Montana with approximately 1,112 closely connected residents
8 invested in Mr. Burghduff's and Sterling's cases, Judge Rieger's involvement,
9 paired with the fact that Mr. Burghduff was already found guilty in a trial she
10 presided over where the entire narrative was *Sterling killed Mr. Carrier*,
11 demonstrates an appearance of bias that reasonably questions Judge
12 Rieger's ability to be impartial when adjudicating Sterling's trial.

13 Finally, the nature and amount of the publicity surrounding Sterling's
14 and Mr. Burghduff's cases is of a type where Prairie County readers and
15 viewers—and the undersigned—would reasonably question Judge Rieger's
16 ability to remain impartial. Over 35 articles have been published and
17 distributed about the cases and Sterling's alleged involvement, with more
18 than half being published in media outlets in close proximity to Prairie County,
19 i.e., the Glendive Ranger Review, Ekalaka Eagle, Terry Tribune, and Miles
20 City Star. See **Ex. 11**. As the presiding judge of a rare crime in Montana's fifth

1 smallest county, where Sterling's codefendant has already been found guilty
2 under the theory that he assisted Sterling in murdering Mr. Carrier, an
3 appearance of bias exists as to Sterling's culpability due to the community's
4 knowledge of Judge Rieger's involvement through the media.

5 Thus, "an objective, reasonable person would have serious and
6 justifiable questions about Judge Rieger's ability to be impartial, and a
7 reasonable member of the public would entertain doubts about Judge
8 Rieger's appearance of being impartial rather than biased," which inherently
9 raises questions about Sterling's right to a fair tribunal. See Nelson
10 Declaration at ¶ 28; *Junkermier*, ¶ 35. To avoid any appearance of bias that
11 could impact Sterling's right to a fair and impartial jury trial, Sterling
12 respectfully requests an order disqualifying Judge Rieger from presiding over
13 his jury trial.

14 CONCLUSION

15 Due to an appearance of bias that reasonably questions the impartiality
16 of Judge Rieger, reassignment to a judge without any bias or prejudice is
17 necessary to ensure Sterling receives a fair and impartial trial. Thus,
18 Sterling's Motion for Disqualification of Presiding Judge should be granted.

19 DATED this 1st day of July, 2024.

20 REEP, BELL & JASPER, P.C.

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BOONE KARLBERG, P.C.

By: /s/ Lance P. Jasper
Attorneys for Defendant