DISTRICT COURT, CITY & COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 DATE FILED: December 12, 2021 7:18 PM CASE NUMBER: 2020CV34319	
Plaintiff: Eric Coomer, v. **Defendants:** Donald J. Trump For President, Inc., et al.	**▲ COURT USE ONLY ▲** Case No.: 2020CV34319 Courtroom: 409

ORDER REGARDING HERRING NETWORKS, INC., D/B/A ONE AMERICA NEWS NETWORK, AND CHANEL RION'S MOTION TO RECUSE

THIS MATTER comes before the Court on Defendants *Herring Networks, Inc., D/B/A One America News Network, and Chanel Rion's Motion to Recuse* filed on December 7, 2022. Having reviewed the Motion and all affidavits attached thereto, this Court enters the following FINDINGS and ORDERS:

Herring Networks, Inc., d/b/a/ One America News Network and Chanel Rion (hereinafter "the OAN Defendants") have brought a motion for this Court to recuse pursuant to C.R.C.P. 97 based on their claims that "this Court has profound distain for [the OAN Defendants] and their counsel, and it is inappropriate and unfairly prejudicial for the Honorable Marie Avery Moses to continue as the judge in this case." In support of their request that this Court recuse, the OAN Defendants reference two types of information that they assert reflect this Court's bias against the OAN Defendants and their counsel. The first set of allegations relate to prior substantive legal orders entered in this matter by the Court. The second set of allegations relate to findings and orders entered by this Court related to the conduct of counsel for the OAN Defendants.

Legal Standards:

Under C.R.C.P. 97, disqualification is appropriate when the motion and

supporting affidavits allege sufficient facts from which it may reasonably be inferred that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party or counsel to the litigation. *Johnson v. Dist. Court*, 674 P.2d 952, 955-56 (Colo. 1984). Actual bias exists if "a judge has a bias or prejudice that in all probability will prevent him … from dealing fairly with a party." *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002). Even where there is no actual bias, a judge must disqualify himself if his "involvement with a case might create the appearance of impropriety." *People in Interest of A.G.*, 262 P.3d 646, 650 (Colo. 2011).

In ruling on the sufficiency of a motion to disqualify, a judge must accept the factual statements contained in the motion and affidavits as true and determine as a matter of law whether they allege legally sufficient facts for disqualification. *S.S. v. Wakefield*, 764 P.2d 70, 73 (Colo. 1988). Where the motion and supporting affidavits merely allege opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias or prejudice, they are not legally sufficient to require disqualification. *Bocian v. Owners Insurance Company*, 482 P.3d 502 (Colo. App. 2020), *citing Wakefield*, *supra* at 73 and *People v. Schupper*, 353 P.3d 880 (Colo. App. 2014) (the record must clearly establish bias, meaning that there must be more than mere speculation).

Subjective Analysis:

As an initial matter, this Court is guided by the recent Advisory Opinion issued by the Colorado Supreme Court Colorado Judicial Ethics Advisory Board ("CJEAB"). C.J.E.A.B. Opinion 2021-02 which suggests that when considering matters of disqualification, a judge should undertake "a two-part test with subjective and objective components to determine if disqualification is necessary." The operation of this two-part test is further described as "[t]he first step is a subjective examination of conscience and emotion by the judge in which the judge must ask if he or she would be biased in favor of the attorney. Even if the judge believes that he or she is unbiased, the "public and litigants

are not privy to the judge's subjective feelings," and thus the judge "must step back and try to evaluate the relationship objectively through others' perspectives" *citing* Cynthia Gray, Judicial Disqualification and Friendship with Attorneys, 52 No. 3 JUDGE J. 20, 22-23 (Summer 2013).

Therefore, as an initial matter, prior to objectively analyzing the allegations of the *Motion to Recuse* and supporting affidavits, the undersigned judge has undertaken a "subjective examination of conscience and emotion" to evaluate whether this judge subjectively feels that she possesses a personal bias or prejudice concerning a party or a party's lawyer. *See* C.J.C. Rule 2.11(A). "Prejudice ... has been described ... as 'a leaning toward one side of a question involved, from other considerations than those belonging to it, or a bias in relation thereto which would in all probability interfere with fairness in judgment.'" *Smith v. Dist. Court*, 629 P.2d 1055, 1057 (Colo. 1981) (quoting *Walker v. People*, 248 P.2d 287, 294 (Colo. 1952)).

Having conducted this substantive analysis, this judge concludes that she does not possess a personal bias or prejudice either for or against any of the parties or attorneys in this matter. As relevant to this *Motion to Recuse*, this judge has significant respect for the legal knowledge and skills possessed by counsel for the OAN Defendants as was reflected at the hearings held on October 13 and 14, 2021.

Objective Analysis:

This Court's subjective analysis regarding the question of bias or prejudice is not sufficient. Because the public does not have any way of assessing a judge's subjective feelings, the judge must step back and try to evaluate the question of bias or prejudice through the perspective of others. *See* C.J.E.A.B. 2021-02 and C.J.E.A.B. 2011-01.

In conducting this objective analysis and in considering a motion under C.R.C.P. Rule 97, the facts alleged in the motion which are supported by affidavit must be accepted as true. The reviewing judge must determine as a matter of

law whether the facts alleged establish a legally sufficient basis for disqualification. Acceptance of the factual assertions is required "even though the judge believes that the statements contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous." *Wright v. District Court*, 731 P.2d 661 (Colo. 1987).

However, not all statements which are presented as "factual" need be accepted. Conclusory statements that a judicial officer is biased do not establish a reasonable basis for disqualification. *In re Marriage of Elmer*, 936 P.2d 617 (Colo. App. 1997). To be legally sufficient, a recusal motion must recite facts, events or statements, which if true, demonstrate partiality or the appearance of bias or prejudice against the movant. *Johnson v. District Court*, *supra*; *Prefer v. PharmNetRx, LLC*, 18 P.3d 844 (Colo. App. 2000). Those facts must support either actual bias or prejudice, or support an objective belief that the judge's impartiality might reasonably be questioned. "[A] motion which merely alleges opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias or prejudice, is not legally sufficient to require disqualification." *Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010),

The burden is on the movant to provide facts upon which the trial judge's impartiality might reasonably be questioned. Unless a reasonable person could infer that the judge would in all probability be prejudiced against the petitioner, it is the judge's duty sit on the case. *Smith v. Dist. Court*, 629 P.2d 1055, 1056 (Colo. 1981).

"[R]ulings of a judge, although erroneous, numerous and continuous, are not sufficient in themselves to show bias or prejudice." *People v. Schupper*, 353 P.3d 880, 894 (Colo. App. 2014). Factual claims that the judge previously ruled against a litigant do not provide grounds for recusal. *Holland v. Board of County Commissioners*, 883 P.2d 500 (Colo. App. 1994). Rulings by a judicial officer on a legal issue do not require disqualification absent facts from which it may reasonably be inferred that the officer is biased or prejudiced or has a bent of

mind. *Goebel v. Benton*, 830 P.2d 995 (Colo. 1992); *Bruce v. City of Colorado Springs*, *supra* and *In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006).

Moreover, what a judge learns in her judicial capacity is a proper basis for judicial observations, and that the use of such information is not the kind that results in disqualification. *Smith v. District Court*, *supra* at 1057. Disqualification is not mandated when the source of the alleged bias results from a party's own actions. If disqualification were mandated in such a circumstance, parties (and perhaps their counsel) could force disqualification by their own conduct. The Colorado supreme court made this clear in *In re: Green*, 11 P.3d 1078, 1087 (Colo. 2000) (a judge "was under no obligation to recuse himself" after party's attorney wrote letters to judge and opposing counsel unjustifiably calling the judge a racist based on trial rulings and trial demeanor"). To that end, while hostility between the court and counsel may warrant disqualification in some cases, it is only required where "a judge so manifests an attitude of hostility or ill will toward an attorney that the judge's impartiality in the case can reasonably be questioned." *Bocian v. Owners Insurance Company*, *supra* at 510, *citing Wakefield*, 764 P.2d at 73.

In addressing the question of disqualification, the Court of Appeals in *People v. Dobler*, 369 P.3d 686 (Colo. App. 2015) cited with approval the following portions of the opinion in *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994)):

> As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the acts in those court-house dramas called trials, he could never render decisions." *In re J.P. Linahan, Inc.*, 138 F.2d 650, 654 (C.A.2 1943).
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> "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."

Factual Allegations:[1]

Here, the OAN Defendants and counsel have made the following factual allegations regarding this judge's perceived bias or prejudice, all of which are accepted as true:

> ***June 8, 2021****: In one of Judge Moses' first actions, the Court sua sponte reversed Judge Rappaport's May 21, 2021 Order rejecting anti-SLAPP discovery.*

This Court entered a detailed Order on June 8, 2021 addressing the legal issues related to discovery in SLAPP proceedings. The Court notes that this June 8, 2021 Order was consistent with a prior order issued by Judge Eric Johnson permitting Plaintiff to conduct discovery with respect to Defendant Eric Metaxas. This June 8, 2021 Order applied to all defendants equally and the OAN Defendants were not singled out in any manner. Adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007).

> ***September 17, 2021****: In the OAN Defendants' lead counsel Blaine Kimrey's first appearance before the Court, Judge Moses took him to task for stating: "To us this is not like a summary judgment procedure, because anti-SLAPP motions, they're decided without any discovery and things that occurred since our motions were filed that we could not have known, . . . such as Mr. Coomer imploding [in] the New York Times." (Kimrey Decl. ¶ 17; Transcript of September 17, 2021, 16:9-12).*

Prior to Mr. Kimrey entering his appearance in this case, on April 27, 2021, Judge Eric Johnson entered an *Order Granting Plaintiff's Motion Pursuant to C.R.C.P. 11 and 12(f)* which informed all counsel of the high standards of professionalism to which Judge Johnson expected counsel to adhere. As relevant here, Judge Johnson entered the following order:

"All attorneys are on notice that this Court will not allow these

[1] The Court is only addressing the allegations that relate directly to the OAN Defendants and their counsel. The other allegations raised by the OAN Defendants and counsel are not considered here because 1) they are merely complaints about this Court's legal rulings; and 2) do not have bearing on this Court's conduct in relation to the OAN Defendants and counsel.

> proceedings to become a megaphone for the airing of the baseless or the irrelevant, nor will it be used to forward any political agenda. This is a court of law, and these proceedings are a search for truth. The Rules of Evidence will be applied and only that which is admissible will be argued. There is no motion for a "gag order" before me, and I will not issue one sua sponte, but if the parties cannot treat these proceedings with the dignity they deserve, the Court will consider issuing one if so moved. But, even without such an order, this Court expects the utmost of professionalism from all who appear before it--in person or in writing. Further, this Court will not shrink from sanctioning unprofessional conduct, or any conduct that falls short of the Court's expectations of all those who appear before it. There can be little doubt that this matter will shine a light into how law is practiced in Colorado, and I challenge all attorneys to take this opportunity to showcase their competence and professionalism. The Court looks forward to a hard-fought, fair, and respectful litigation of the issues presented. The litigants, our profession, our legal system, and the search for truth deserve as much; and this Court will countenance no less."

Because Mr. Kimrey was not counsel of record when the Order was entered, the Court took the opportunity on September 17, 2021 to advise Mr. Kimrey of the expectation that arguments of counsel are to be kept as professional as possible. Specifically, in response to Mr. Kimrey's comment about Plaintiff "imploding in the New York Times", this Court stated, "Mr. Kimrey, I'm going to interrupt you, because you are new to this. We have had a great run so far of no *ad hominem* type attacks during these conferences. So if he can keep things as professional as possible, I would appreciate it."

This gentle admonition does not in any way suggest bias or prejudice against the OAN Defendants or counsel.

> ***September 17, 2021****: The Court also declined the OAN Defendants' request to extend the date for the anti-SLAPP hearing to allow for more discovery of Dr. Coomer because "with anti-SLAPP, the requirement is that we get this to hearing as quickly as possible." (Kimrey Decl. ¶ 18; Transcript of September 17, 2021, 11:15-17).*

While true, this does not state any facts supporting disqualification. Adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007).

> ***September 22, 2021****: The Court denied the defendants' request to take the depositions of nine declarants who were undisclosed by Dr. Coomer until their declarations were filed in support of Dr. Coomer's omnibus anti-SLAPP response. (Kimrey Decl. ¶ 19). The Court blamed the defendants for their "failure to pursue the available avenues of discovery in a timely manner," even though the identities (or even existence) of eight of the declarants were not know to the defendants until September 17, 2021 and even though some defendants had asked for, and been denied, discovery twice. (Id.). The Court also stated, without describing what information it was referring to, that the OAN Defendants' motion seeking discovery contained confidential information that was not redacted and stated that the briefing should have been filed as "suppressed." (Id.). The only document that was "suppressed" on the docket by the Clerk as a result of the order was a transcript of the September 17, 2021 hearing, which is not confidential. See Docket No. D98938CEAED81.*

While true, this does not state any facts supporting disqualification. Adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007).

> ***October 7, 2021****: The Court denied the unopposed pro hac vice application of Vedder Price P.C. associate Julia Koechley because it was inadvertently filed under seal. (Kimrey Decl. ¶ 11). The Court noted that multiple documents had been filed as "suppressed" by the OAN Defendants since October 1, 2021, and questioned whether this was a "clerical error, or if counsel is flagrantly misrepresenting the scope of the Omnibus Protective Order." (Id.). As the OAN Defendants explained in a motion for partial reconsideration, a clerical error by local counsel Richard Westfall's paralegal led to the inadvertently suppressed filings, and there was no strategic advantage to be gained by filing, for instance, pro hac vice applications under seal. (Id.). In response to the Court's Order, the OAN Defendants refiled as public all documents that previously had been filed inadvertently under seal. See Docket Nos. FA5B431D4E222, 9A5225FE807AA, DB730634B4821, 46E7E99E65106, 562EA1B47FCF5, B9EAF95E6523D, 3F5C201A5F888.*

While true, this does not state any facts supporting disqualification. It is not disputed that counsel for the OAN Defendants was improperly filing all pleadings as "suppressed."

> ***October 8, 2021****: The Court entered an order granting in large part the OAN Defendants' motion to set aside the protective order and unseal documents, including lifting the protective order on Dr. Coomer's*

> *deposition, but used that order to make its first threat to revoke the pro hac vice status of Vedder Price attorneys. (Kimrey Decl. ¶ 22). The Court's Order claimed that the OAN Defendants (1) misrepresented the Court proceedings, (2) used their pleadings to intimidate others, and (3) misapprehended the state-wide procedures regarding court access. (Id.). As discussed below, none of those positions has merit.*

The October 8, 2021 Order stated the following which does not reflect any bias or prejudice that would support disqualification. Rather, the Court identified problematic aspects of counsel's arguments in neutral, measured terms before granting the relief the OAN Defendants had requested.

> "First, the Court cannot ignore the improprieties of the Motion and Reply filed by Defendants Herring Networks, Inc. and Chanel Rion. These improprieties include the following: 1) Misrepresentations of court proceedings; 2) Use of pleadings in an attempt to intimidate others; and 3) Misapprehension of state-wide procedures regarding access to court records and transcripts.
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> Counsel for Defendants Herring Networks and Chanel Rion are cautioned that repeated improper conduct may subject counsel to sanctions including those available under C.R.C.P. 11 or C.R.C.P. 107, a referral to appropriate disciplinary bodies, and/or revocation of pro hac vice admissions pursuant to C.R.C.P. 205.3(5).
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> However, despite the conduct of counsel for Defendants Herring Networks, Inc. and Chanel Rion, the Court finds that good cause exists to MODIFY IN PART the Omnibus Protective Order entered on September 24, 2019 for the reasons addressed below."

While the OAN Defendants continue to disagree with the Court's determination that their pleadings were improper, that disagreement with the Court's findings and conclusions cannot form the basis for disqualification. The Court identified with specificity the problematic portions of the pleadings filed by the OAN Defendants and did so in measured terms. The Court did not take any adverse action against the OAN Defendants, but rather, in measured and respectful terms cautioned counsel that the Court viewed their pleadings as improper and that sanctions could result if the conduct continued.

> ***October 11, 2021****: The Court entered its Civility Order, which included a list of words and phrases that counsel should not say, such as "in an effort to mislead the court," "outrageous," "absurd," and "ridiculous." (Kimrey Decl. ¶ 23).*

This Civility Order applied equally to all attorneys in this case and does not state any facts supporting disqualification.

> ***October 11, 2021****: The Court entered an order again denying the defendants the right to take discovery of Dr. Coomer's declarants before the anti-SLAPP hearing, claiming that defendants did not seek discovery in a timely manner, even though they had no way of knowing what witnesses Dr. Coomer would present and even though some defendants had already been denied reciprocal discovery twice. (Kimrey Decl. ¶ 24). The Court adopted an incorrect evidentiary standard for the upcoming anti-SLAPP hearing, concluding that: "The Court will not be weighing the evidence presented by the parties or resolving conflicting factual claims. The Court's inquiry is limited to whether Plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. 'It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law.' Baral v. Schnitt, 1 Cal. 5th 376, 384–85, 376 P.3d 604, 608 (2016)." (Id.). Such a standard is inconsistent with the applicable law and plainly would favor Dr. Coomer.*

The OAN Defendants' ongoing disagreement with the Court's ruling does not state any facts supporting disqualification. Adverse legal rulings, standing alone, do not constitute grounds for claiming prejudice or bias. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007).

> ***October 13, 2021****: The anti-SLAPP hearing began. The Court allotted 6.5 hours of argument to the single plaintiff and 7.5 hours to the 14 defendants. (Kimrey Decl. ¶ 27).*

While true, this does not state any facts supporting disqualification.

> ***October 14, 2021****: The Court threatened Kimrey with the Civility Order for stating that OAN did not reach Dr. Coomer for comment because Dr. Coomer "was in hiding at the time, and if he went to his door, he'd show up with a shotgun," even though Dr. Coomer put that very same information in a declaration that had been submitted to the Court. (Kimrey Decl., ¶ 28; Transcript of anti-SLAPP Hearing Volume II, 373:8-374:12).*

The OAN Defendants have not provided the Court with a copy of the transcript of anti-SLAPP Hearing. However, the Court does recall reminding Mr. Kimrey of the Civility Order because the Civility Order provided that "[e]xpressions of opinion that tend to denigrate another's integrity are not persuasive, will not be well received and are more likely to reflect badly on the speaker than on the object of the remark." Without the transcript or reference to the exact language used by the Court, the Court is unable to assess whether the Court's comments would be considered a threat by a reasonable person, or if that is merely a conclusory statement of opinion regarding the OAN Defendants' characterization of the Court's statement. *See Bocian v. Owners Insurance Company*, 482 P.3d at 510 (court cannot infer without additional context that hostility or ill will existed to warrant disqualification). Regardless, reminding counsel of their obligations under the Civility Order does not demonstrate any sort of bias or prejudice.

> ***October 25, 2021****: The Court entered an Order allowing Dr. Coomer 150 pages for his proposed findings of fact and conclusions of law and limiting each defendant group to 20 pages, plus a 20-page joint filing, if they could reach an agreement. (Kimrey Decl. ¶ 34).*
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> While true, this does not state any facts supporting disqualification.
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> ***November 3, 2021****: The Court denied two motions by the OAN Defendants (including the October 11 motion for partial reconsideration) without explanation, simply stamping "Denied" on the top of the motions. (Kimrey Decl. ¶ 35).*
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> While true, this does not state any facts supporting disqualification.
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> ***November 21, 2021****: In the Nov. 21 Order, the Court denied thousands of good faith evidentiary objections based solely on the number of objections, accused four Vedder Price attorneys of "misconduct," again threatened to revoke the pro hac vice of the admissions of the Vedder Price attorneys, attempted to divide the OAN Defendants' legal team by suggesting that junior lawyers should refuse to put their names on pleadings, and sua sponte awarded attorneys' fees and costs as sanctions against the OAN Defendants.*

In analyzing this claim, the Court considers the Court's warning that counsel for the OAN Defendants faced the revocation of their *pro hac vice* status as similar to a judge reporting an attorney for misconduct to attorney regulation. Colorado courts and the Colorado Judicial Ethics Advisory Board have determined that such a report of misconduct does not require the recusal of the judge. *See Watson v. Cal-Three, LLC*, 254 P.3d 1189 (Colo. App. 2011) and C.J.E.A.B Opinion 2011-01, C.J.E.A.B Opinion 2012-06.

Here, the OAN Defendants argue that the Court's strong admonition that counsel for the OAN Defendants had engaged in serious misconduct was evidence of this judge's bias or prejudice, and was not an appropriate response to counsel's conduct. The OAN Defendants continue to argue that it was entirely appropriate for them to file 5,025 discrete evidentiary objections (spanning over 1,200 pages of written objections). *See Exhibit A* to *Plaintiff's Motion for Expedited Relief from the OAN Defendants' Evidentiary Objections* filed November 17, 2021.

The basis for the Court's determination that counsel for the OAN Defendants had engaged in serious misconduct was the Court's determination that "[t]he sheer volume of the 4,937 frivolous, vexatious and groundless objections raised by the OAN Defendants is staggering. The Court finds that these objections are designed to subvert the judicial process, to harass another party, to needlessly increase the cost of litigation, and to unnecessarily expand the proceedings through improper conduct."

The propriety of this Court's finding that the OAN Defendants' had lodged their evidentiary objections in an effort to subvert the judicial process, harass another party and needlessly increase the cost of litigation is revealed by the claim of the OAN Defendants in the *Motion to Recuse* that it is "question[able] whether the Court could have given a fulsome analysis to more than 5,000 evidentiary objections in just four days as the Court has claimed (for reference, it took 10 timekeepers more than 460 hours to review the evidence and prepare the objections)."

Colorado Code of Judicial Conduct Rule 2.15(D) requires a judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct to take appropriate action. Here, the filing of the 5,025 evidentiary objections was an indication that counsel for the OAN Defendants had violated Colorado Rules of Professional Conduct Rule 3.5(d) by engaging in conduct intended to disrupt a tribunal and Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

Faced with counsel for the OAN Defendants' efforts to subvert the judicial process, a reasonable person would view the Court's actions as appropriate in the circumstances. The Court did not use pejorative or insulting language. The Court did not act hastily or take the available step of actually revoking counsel's *pro hac vice* status. Rather, the Court clearly set forth the Court's expectations that counsel refrain from engaging in future misconduct. The Court's appropriate response to counsel's misconduct cannot form the basis for recusal, notwithstanding counsel's continued insistence that filing 5,025 evidentiary objections was appropriate. *See Watson v. Cal-Three, LLC*, 254 P.3d 1189, 1192 (Colo. App. 2011) (judge not required to recuse from case after sending letter of complaint to office of attorney regulation concerning attorney); and *People v. Bowring*, 902 P.2d 911, 920 (Colo. App. 1995) (trial court not required to recuse where trial court instructed prosecutor to raise issue of possible misconduct by defense counsel).

Totality of the Circumstances:

While the Court has been firm with all parties and attorneys regarding the standards the Court has established to maintain the integrity of these proceedings, the Court has never expressed any hostility or disrespect towards the OAN Defendants or their counsel. However, to ensure that recusal is not required here, the Court has evaluated other cases where a judge was required to recuse as a matter of law to determine whether the allegations here rise to a similar level.

In *Klinck v. District Court*, 876 P.2d 1270, 1277 (Colo. 1994), the appellate court held that disqualification was required when a judge clashed with counsel during a hearing, accused him of improprieties, angrily reprimanded him in open court when he commented on the court's delay, and advised co-counsel to keep the attorney "on a short leash." Here, the Court has not taken any personal offense or umbrage from the conduct of counsel and has not use any denigrating language such as placing an attorney on a "short leash."

In *Goebel v. Benton*, 830 P.2d 995, 998 (Colo. 1992), the appellate court held that disqualification was required because the judge had an *ex parte* lunch with a key witness and discussed an issue of critical significance to the judge's ultimate ruling in the case. Here, there has been absolutely no such conduct or allegation of such conduct.

In *Brewster v. Dist. Ct. of the Seventh Jud. Dist.*, 811 P.2d 812 (Colo. 1991), the court found disqualification was required when the judge hastily found two attorneys in contempt and sentenced them to jail without providing adequate notice and without following the contempt procedures required by C.R.C.P. 107. No such conduct has occurred here.

Finally, the Court has considered all of the OAN Defendants' allegations in view of the Colorado Code of Judicial Conduct. For the reasons stated above, the Court does not find that there has been any violation of the Code of Judicial Conduct that would undermine public confidence in the impartiality of the judiciary.

Conclusion:

Taking all of the allegations of the *Motion to Recuse* and the supporting affidavits as true, the Court cannot conclude that under an objective test a reasonable person would infer that this judge is biased or prejudiced or has a bent of mind against the OAN Defendants or their counsel. Rather, the factual allegations, all of which are accepted as true, relate solely to this judge's adverse legal rulings or to this judge's orders relating to the Court's obligation to protect

these legal proceedings from abuses. There are no allegations, other than the opinions or conclusions of counsel, that suggest this judge harbors any personal bias, prejudice or animosity towards the OAN Defendants or their counsel. To the contrary, the record demonstrates that the Court has been measured in its response to counsel's violation of court orders and counsel's misconduct. Courts must proceed cautiously in exercising their inherent authority to use the powers reasonably required to protect the efficient function, dignity, independence, and integrity of the courts, and this judge has done just that. *Laleh v. Johnson*, 403 P.3d 207 (Colo. 2017), *citing Pena v. District Court*, 681 P.2d 953 (Colo. 1984).

For the above reasons, the OAN Defendants' *Motion to Recuse* is DENIED.

SO ORDERED this 12th day of December, 2021.

BY THE COURT:

Marie Avery Moses
District Court Judge