

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 CRESTONE AVENUE, P.O. BOX 279, SALIDA, CO, 81201	DATE FILED: December 14, 2021 10:38 AM
THE PEOPLE OF THE STATE OF COLORADO v. Defendant(s) BARRY LEE MORPHEW	<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2021CR78 Division: 2 Courtroom:
Order Regarding Hearing December 14, 2020	

Yesterday evening the Court was advised of a filing by the Defense. That motion (Motion to Disqualify Judge Patrick Murphy (D-55)) seeks to disqualify this judge from hearing this case. The Motion was filed yesterday, December 13, 2021 at 3:13 p.m.

Last night, at 8:07 p.m., the prosecution filed a Response to D-55.

This morning, at 7:29 a.m., the Defense filed a Reply to the Response.

The Court has now been able to read the Motion, the Response and the Reply.

Because of the late filing, the Court has not had the ability to analyze, in any meaningful way, the Motion or the legal authority that supports the Motion. However, the Court disagrees with the defense position that the filing of the Motion alone requires disqualification.

Both Colorado Rule of Criminal Procedure 21(b) and Colorado Revised Statute 16-6-201 require the Court to determine if the facts alleged in the accompanying affidavits, taken as true, rise to the level requiring disqualification.

The Court agrees with the Response which states "the Motion appears to present a novel question in Colorado of whether the Court's friendship with attorneys who represent a witness who may be called as a witness in a different case creates cause for the Court to disqualify."

At this point, without further analysis and research, the Court is unable to determine if the situation as described in the affidavits requires disqualification. The Court declines to make substantial decisions such as this on the fly and without adequate time to analyze and research the argument and the legal authority that supports, or doesn't support, the argument.

By Rule, once such a Motion is filed, "all other proceedings in the case shall be suspended until a ruling is made thereon." C.R.C.P. Rule 21(b)(3)

Therefore, the hearing that was scheduled to to commence at 1:00 this afternoon can not go forward. Instead, the Court will hear from the parties regarding any additional filings on this particular issue and will need to confirm with the prosecution that Shoshona Darke is a potential witness in this case.

In an effort to be as transparent as possible, the Court will also put on the record the Court's relationship with attorney Sean McDermott as it is that relationship that forms the basis of the Motion.

The Court endeavored to complete this Order in time for subpoenaed witness to be informed and called off, if appropriate.

Issue Date: 12/14/2021

A handwritten signature in black ink, appearing to read "Pat Murphy". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

PATRICK W MURPHY
District Court Judge