DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲COURT USE ONLY▲
PEOPLE OF THE STATE OF COLORADO **v.** **JAMES EAGAN HOLMES,** **Defendant**	Case No. **12CR1522** Division: **202**

ORDER REGARDING MOTION FOR CHANGE OF JUDGE (D-253)

The defendant moves for a change of judge. Motion at p. 1.[1] The prosecution opposes the motion. *Id.* For the reasons articulated in this Order, the motion is denied as meritless.

The defendant's motion is grounded in § 16-6-201(1)(d), C.R.S. (2014) and Crim. P. 21(b)(1)(IV).[2] However, neither the statute nor the rule supports the motion. As the record amply reflects, the undersigned is not "in any way interested or prejudiced with respect to the case, the parties, or counsel." *See* § 16-6-201(1)(d); Crim. P. 21(b)(1)(IV). Further, accepting as true the facts stated in

[1] The motion is accompanied by two affidavits. One affidavit is from an attorney who has been employed in defense counsel's office for almost three decades. Motion Ex. A. The other is from an attorney who spent more than two decades in that office. Motion Ex. B.

[2] The defendant incorrectly cites Crim. P. 21(b)(2)(IV). Motion at p. 1.

the motion and affidavits,[3] but not the unsubstantiated opinions and conclusions advanced therein, the Court finds that disqualification is clearly not warranted. No objective person could reasonably infer from the undersigned's Orders that he has a bent of mind against the defense or that he is in any way biased or prejudiced against the defendant or his attorneys.

The undersigned stands steadfast by every Order he has issued in this case. The Court's Orders demonstrate that the undersigned has faithfully applied the law to the best of his ability to the facts established by the evidence. Neither the use of metaphors nor the use of flowery language—which the undersigned has employed in ruling on ***both parties'*** motions and on ***nonparties'*** motions—in any way disrespected, disdained, demeaned, disparaged, or insulted defense counsel, much less violated the Colorado Code of Judicial Conduct. Moreover, while the undersigned has been uncompromisingly forthright, and at times even blunt, in addressing the arguments raised in this case—regardless of who raised them—there is not a scintilla of evidence that he has used gratuitously pejorative language or taken a hostile, derogatory, deprecatory, or opprobrious tone with defense counsel.[4] To the contrary, in the Order that appears to have triggered the motion to

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[3] "In passing on the sufficiency of [a] motion for disqualification, the judge must accept the factual statements in the motion and affidavits as true, even if he . . . believes them to be false or erroneous." *Bruce v. City of Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010).

[4] It is critical, especially in a death penalty case, that the rulings issued by the Court are free of ambiguity. The undersigned has attempted to be clear, thorough, and deliberate in all his rulings.

recuse, Order D-252, the Court made it clear that it holds defense counsel in high regard. *See* Order D-252 at p. 6 (indicating that defense counsel are very experienced and skilled).[5]

The defense does not contest the accuracy of the language the undersigned has used in addressing its assertions in this case. *See generally* Motion. Instead, the defense's motion avers that some of that language shows a bias. Motion at p. 2.[6] That the undersigned is straightforward and does not mince words in his rulings is not evidence of bias. The motion fails on its face because it does not mention, much less compare, the language complained of with similar language used to address arguments raised by the prosecution and nonparties.[7] The Court's

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[5] In Order D-252, which was issued two business days before the motion to recuse was filed, the Court reprimanded defense counsel for attacking the honor and dignity of his Court. *See* Order D-252 at pp. 2-6. More specifically, the undersigned admonished counsel for accusing the Court of being "intent" on "organizing" a jury that will sentence their client to death, instead of the fair and impartial jury to which he is constitutionally entitled. *Id.* Significantly, although Order D-252 is the strongest-worded Order issued by the undersigned, albeit appropriately so, the motion to recuse does not mention, much less complain about, the language used in that Order. The Court does not understand why counsel appear to have no issue with the language in that Order, but nevertheless move for a new judge based on much less direct language in other Orders, some of which were issued months ago. Those two positions are inconsistent and irreconcilable. Nor does the defense explain why it waited until now to file a motion for a new judge.

[6] The defendant quotes words and phrases from different Orders. In ruling on the motion, the Court considers those words and phrases in the context in which they were used, not in a vacuum. Additionally, the Court notes that every word or phrase, or a variation of it, has been used by another court in a published decision. Indeed, almost all of the quoted language is commonly used by attorneys and judges.

[7] Of course, because the defense has filed more than twice as many motions as the prosecution, the undersigned has been required to address many more defense arguments than prosecution arguments.

research revealed no authority that requires, or even allows, judicial disqualification based on a judge's writing style or willingness to be candid and forthcoming.[8]

Knowing all the relevant facts, and applying the governing legal standard, no reasonable person would harbor doubts about the undersigned's impartiality. Because there is no legitimate reason to recuse from this case, the undersigned has a strong duty to remain on the case. *Nichols v. Alley*, 71 F.3d 347, 351-52 (10th Cir. 1995) (referring to "the settled principle that a judge has as strong an obligation not to recuse when the situation does not require as he has to recuse when it is necessary"); *see also Sofford v. Schindler Elevator Corp.*, 954 F. Supp. 1457, 1458 (D. Colo. 1997) (judge declining to recuse himself based on his "duty to serve," and explaining that he was "equally obligated not to recuse [himself] where the facts [did] not give fair support to a charge of prejudgment") (citations omitted).

[8] The defense's motion even complains about the terms "meritless" and "devoid of merit" in the undersigned's Orders. Motion at pp. 3-4. The undersigned has also used "lacks merit" and "has no merit," but the defense does not object to these terms, even though they have the same meaning as "meritless" and "devoid of merit." A Westlaw search revealed that Colorado's Appellate Courts have used "meritless" or "devoid of merit" in at least 341 published opinions. If "lacks merit" and "has no merit" are added to the search, the result is 561 published opinions. Moreover, in *Dunlap v. People*, a death penalty case out of this jurisdiction, the Colorado Supreme Court rejected one of the defendant's arguments on appeal as "completely meritless." 173 P.3d 1054, 1089 (Colo. 2007).

The undersigned's unwavering resolution and commitment to control these proceedings and to ensure compliance with all of the applicable rules, to doggedly demand proper deference from all counsel, and to unconditionally defend the dignity and honor of his Court should not be confused with the untenable allegations of misconduct advanced in Motion D-253. The undersigned refuses to apologize for doing that which all judges are required to do, regardless of whether the case before them is a death penalty case or not.

The defense's motion for a change of judge is devoid of merit and would unnecessarily delay this case significantly. Accordingly, it is denied.

Dated this 14th day of November of 2014.

BY THE COURT:

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2014, a true and correct copy of the **Order regarding motion for change of judge (D-253)** was served upon the following parties of record:

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