

DISTRICT COURT, MESA COUNTY, COLORADO Mesa County Justice Center 125 N. Spruce Street Grand Junction, CO 81501	
THE PEOPLE OF THE STATE OF COLORADO, v. TINA MARIE PETERS, Defendant.	
DANIEL P. RUBINSTEIN, District Attorney* PO Box 20,000 - 5031 Grand Junction, CO 81502-5031 Telephone: 970-244-1730 Registration Number: 27473 (DPR); 27697 (JSD); 26869 (RSS) *Counsel of Record	
RESPONSE TO DEFENDANT’S MOTION TO JUDGE BARRETT	▲ COURT USE ONLY ▲
	Case No. 22CR371 Div.: 9
DISQUALIFY	

The People oppose Defendant’s motion to disqualify Judge Barrett for the reasons stated below:

BACKGROUND

Defendant, Tina Peters, was convicted by a jury of three counts of attempt to influence a public servant and one count each of first-degree official misconduct, violation of duty, failure to comply with

requirements of the Secretary of State, and conspiracy to commit criminal impersonation. CF, pp.4638-51, 5207. Judge Matthew Barrett presided over Defendant's pretrial proceedings, trial, and sentencing hearing.

On direct appeal, the Colorado Court of Appeals affirmed Defendant's convictions but vacated her sentence on the ground that, while most of the trial court's sentencing statements indicated wholly appropriate considerations, some of the statements referenced Defendant's protected beliefs and statements about election fraud in violation of her First Amendment rights. *People v. Peters*, 2026 COA 24, ¶¶ 145-47, 152. The Court of Appeals remanded the case for the trial court to resentence Defendant relying on proper sentencing considerations. *Id.* at ¶ 151.

Defendant has now filed a motion to disqualify Judge Barrett from presiding over her case. As grounds, she asserts that Judge Barrett is biased against her. This assertion fails.

LEGAL ANALYSIS

I. Defendant fails to establish bias or prejudice.

A judge who is biased against a party or otherwise prejudiced with respect to a case shall be disqualified to preside over the case. § 16-6-201(1)(d), C.R.S. 2026. However, the party asserting bias “must establish that the judge had a substantial bent of mind against him or her.” *People in Interest of A.P.*, 2022 CO 24, ¶ 30 (quoting *People v. Drake*, 748 P.2d 1237, 1249 (Colo. 1988)). Mere speculative statements are not enough, and the record must clearly establish such bias. *A.P.*, ¶ 9.

“For a bias claim to be viable, the Supreme Court has suggested that a judge must show ‘deep-seated favoritism or antagonism that would make fair judgment impossible.’” *A.P.*, ¶ 31 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). “[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.” *Id.* (quoting *Liteky*, 510 U.S. at 555).

“[E]xpressions of impatience, dissatisfaction, annoyance, and even

anger, that are within the bounds of what imperfect [people], even after having been confirmed as . . . judges, sometimes display’ don’t establish bias or partiality.” *Id.* (quoting *Liteky*, 510 U.S. at 555-56)

And “[p]rejudice must be distinguished from the sort of personal opinions that as a matter of course arise during a judge’s hearing of a cause.” *Smith v. Dist. Ct.*, 629 P.2d 1055, 1057 (Colo. 1981). “The general rule of law is that what a judge learns in his judicial capacity is a proper basis for judicial observations, and that the use of such information is not the kind of matter that results in disqualification.” *Id.*

“[A] judge’s rulings on issues presented in prior proceedings, even if erroneous, are insufficient by themselves to demonstrate disqualifying bias or prejudice.” *People v. Lanari*, 926 P.2d 116, 119 (Colo. App. 1996). Thus, adverse legal rulings are “unlikely to provide grounds” for a bias claim. *A.P.*, ¶ 32.

Here, Defendant’s assertion of bias is based solely on the sentence Judge Barrett imposed and his explanation of the reasons for imposing

the sentence. Judge Barrett's rejection of Defendant's arguments at sentencing and imposition of a sentence are adverse legal rulings, which do not alone establish bias, "as they are proper grounds for appeal, not for recusal." *A.P.*, ¶ 32. Significantly, Defendant neither objected to Judge Barrett's statements at sentencing, nor did she raise a claim of bias at any time prior to his adverse ruling at sentencing.

And the fact that Defendant prevailed on appeal in her argument that some of Judge Barrett's considerations were legally inappropriate does not establish that his error was motivated by bias or prejudice. *See Lanari*, 926 P.2d at 119. Judge Barrett's statements were based on the evidence and argument presented at the sentencing hearing, and, as the Court of Appeals noted, Defendant did not object at the time to any of the Judge's statements. Now that the Court of Appeals has clarified how Judge Barrett may and may not appropriately consider the evidence presented at sentencing, nothing in his prior ruling establishes that he will be incapable of fairly doing so.

Indeed, Judge Barrett’s handling of this case demonstrates that he has and continues to properly serve his role as a neutral and impartial decision-maker, from his considered pretrial and trial rulings, to his appropriate weighing of the statutory sentencing considerations, to his transparency in disclosing his correspondence with the Governor’s office regarding Defendant’s clemency application, in which he took no position. *See* Order re: Uploading Documents.

II. Judge Barrett’s impartiality is not reasonably in question.

When a party files a disqualification motion, the judge must consider the Code of Judicial Conduct. *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002). Rule 2.11(A) of Colorado’s Code of Judicial Conduct requires a judge to recuse himself in any proceeding in which the judge’s impartiality might reasonably be questioned. However, “[u]nless a reasonable person could infer that the judge would in all probability be prejudiced against [a party], the judge’s duty is to sit on the case.” *A.P.*, ¶ 25 (quotation omitted).

Here, it cannot be said that a reasonable person could infer that Judge Barrett would in *all probability* be unfairly prejudiced against Defendant. As noted above, Judge Barrett's statements were made at the sentencing hearing to explain the sentence imposed and were based on information he learned during the proceedings in his judicial capacity. And, as the Court of Appeals concluded, many of his strongly worded statements were "wholly appropriate," *Peters*, ¶ 146, and, thus, do not reflect any improper bias or prejudice. A reasonable person would not infer that a judge's consideration, without objection, of facts presented during the case showed that the judge would in all probability be prejudiced against the defendant once properly directed on how it could consider those facts.

CONCLUSION

In sum, Defendant fails to establish that Judge Barrett is biased against her, and a reasonable person could not infer, based on Judge Barrett's statements during the sentencing hearing, that he would in all

probability be unfairly prejudiced against Defendant. Accordingly, this Court should deny Defendant's motion to disqualify Judge Barrett.

/s/ Daniel P. Rubinstein

DANIEL P. RUBINSTEIN,
District Attorney*
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **RESPONSE TO DEFENDANT'S MOTION TO DISQUALIFY JUDGE BARRETT** upon **JOHN CASE** and all parties herein via the Colorado Courts E-filing System (CCES) on November 22, 2024.

/s/ Jordan Weimer