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6
7 **IN THE ARIZONA SUPERIOR COURT**
8 **FOR THE COUNTY OF PIMA, STATE OF ARIZONA**

9 STATE OF ARIZONA,
10
11 Plaintiff,
12
13 v.

14 LANE MYERS,
15
16 Defendant.

Case No. CR20251454-001

17 **MOTION TO DISQUALIFY JUDGE**

18 Assigned: Hon. D. Metcalf

19 COMES NOW defendant, LANE MYERS, by and through undersigned counsel, and hereby
20 moves the presiding judge to conduct a hearing on defendant's motion to disqualify the Hon. D.
21 Metcalf due to the extrajudicial connection between the judge and the litigants in this matter requiring
22 mandatory disqualification pursuant to Rule 2.11, Arizona Rules of Judicial Conduct.

23 **MATERIAL FACTS:**

24 Defendant is a current litigant before Hon. D. Metcalf of the Arizona Superior Court. As of
25 this filing, there is an ongoing probation revocation hearing. Matthew Walker is a litigant before the
26 court, and at the time of this filing, is undergoing continued cross-examination in this matter. He
was called by the state as a material witness. Part of the subject matter of the revocation hearing

1 centers around the defendant's social media posts after Mr. Walker sought to change the Arizona
2 Rules of Court. The petition sought to change the rules throughout the state for recording in the
3 courtroom. Mr. Walker alleged the defendant's conduct in the underlying case warranted changing
4 the rules of courtroom recording- an issue of statewide importance to every citizen.

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6 The honorable D. Metcalf is presiding over Mr. Myers's probation revocation matter, and at
7 the time of this motion, is also a member of a task force to whom Mr. Walker's request implicating
8 and denigrating Mr. Myers's conduct and speech was presented. On September 3, 2026, that task
9 force met to discuss, *inter alia*, the petition set forth by Mr. Walker. The Hon. D. Metcalf did not
10 recuse himself from the meeting and did not recuse himself from the discussions of the petition. He
11 also took part in the public comment portion of the hearing where Mr. Myers and Mr. Walker's legal
12 intersection before the Hon. D. Metcalf was openly addressed.

13
14 Because the defendant has ongoing litigation before the court (his revocation hearing is
15 ongoing), and because the state's primary witness is Mr. Walker, who is currently undergoing
16 continued cross-examination, defendant now moves to disqualify the judge as the extrajudicial
17 conduct of engaging in the meeting where the facts of the ongoing litigation were at issue trigger the
18 requirements of CJC Rule 2.11.

19
20 **DISQUALIFICATION STANDARD:**

21 Arizona CJC Rule 2.11(A) mandates that a judge disqualify himself or herself in any
22 proceeding in which the judge's impartiality might reasonably be questioned. The rule's enumerated
23 circumstances are not exhaustive. Comment 1 to Rule 2.11 expressly states that a judge is
24 disqualified whenever impartiality might reasonably be questioned, regardless of whether any of the
25 specifically-listed circumstances apply. The Arizona Supreme Court has confirmed that a judge's
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1 obligation to disqualify applies regardless of whether a motion to disqualify is filed. See, e.g.
2 *Contreras v. Bourke*, 260 Ariz. 319, 574 P.3d 224 (2025), Ariz. R.Sup. Ct. 81, Rule 2.11(A), Code of
3 Judicial Conduct.

4 In its application, the standard is objective. It asks, would an objective, disinterested
5 observer fully informed of the facts underlying the grounds on which disqualification was
6 contemplated would entertain a significant doubt that justice would be done in the case. *Contreras*
7 *v. Bourke*, 260 Ariz. 319, 574 P.3d 224 (2025) *State v. Smith*, 203 Ariz. 75, 50 P.3d 825 (2002)
8 (Arizona Supreme Court articulating the Arizona Judicial Ethics Advisory Opinion No. 96-14, re-
9 affirming *Contreras*'s holding that the judge's belief in his own objectivity is not the standard, but
10 rather whether an objective, disinterested, fully informed observer would reasonably question the
11 judge's impartiality).
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14 Finally, one of the principles of disqualification law in Arizona is that the complained-of
15 prejudice or bias must arise from extra-judicial sources, not merely the judge's participation in the
16 case. See, *State v. Granados*, 235 Ariz. 321, 332 P.3d 68 (Ct. App. 2014) *Smith v. Smith*, 115 Ariz.
17 299, 564 P.2d 1266 (Ct. App. 1977) (judicial rulings alone and the judge's legitimate exercise of
18 judicial discretion are not legitimate sources for disqualification).
19

20 **TIMLINESS:**

21 A party seeking a change of judge for cause must file a motion no later than 10 days after
22 discovering that grounds exist. Rule 10.1, Ariz.R.Crim.Pro. In the matter at bar, Defendant
23 discovered the judge's participation in this matter on September 3, 2026, when the hearing was live-
24 streamed on You Tube. This was confirmed by counsel later that day. Generally, the judge sitting on
25 a rules committee would not be cause for disqualification, but this is the first instance where
26

1 defendant can affirmatively say that the judge participated in an extra-judicial matter that dealt
2 directly with the issues and litigants before the court. Accordingly, the time limit for filing this
3 motion began upon the participation of Hon. D. Metcalf at that committee meeting. This motion is
4 timely filed.
5

6 **ARGUMENT:**

7 In the instant case, judge Metcalf's service on the rules committee is the exact extrajudicial
8 involvement that satisfies the disqualification requirements. The rules committee is not merely
9 tangentially related to the ongoing litigation. It is being petitioned to change a rule specifically
10 based on the defendant's conduct, and the defendant was openly discussed during the public comment
11 period. This creates multiple layers of concern under Arizona disqualification law.
12

13 First, the references to the defendant and Mr. Walker during the public committee comment
14 period involves advocacy and characterizations of the defendant's conduct that go beyond mere
15 official judicial communications.

16 Second, the judge's simultaneous service on a committee being petitioned to change a rule
17 based on the defendant's conduct creates an objective outside appearance that the judge has formed or
18 may form views about the defendant's conduct outside the courtroom. This made worse because it
19 takes place in a forum where the defendant has no opportunity to respond or present evidence. This
20 too was referenced by public comments.
21

22 Here, The Arizona Judicial Ethics Advisory Committee's Opinion 97-2 provides instructive
23 guidance. Disqualification When Members of Judicial Merit Commission Appear Before Magistrates,
24 AZ Jud. Adv. Op. 97-2. In that opinion, the Committee held that municipal judges must disqualify
25 themselves from cases in which a party is represented by a member of the merit commission that
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1 reviews the judge's performance for retention purposes, because the commission's role creates an
2 appearance of impropriety that would cause a reasonable person to question the judge's impartiality.

3 Disqualification When Members of Judicial Merit Commission Appear Before Magistrates, AZ Jud.

4 Adv. Op. 97-2. The Committee applied the test for appearance of impropriety as whether the
5 conduct would create in reasonable minds a perception that the judge's ability to carry out judicial
6 responsibilities with integrity, impartiality, and competence is impaired. Disqualification When
7 Members of Judicial Merit Commission Appear Before Magistrates, AZ Jud. Adv. Op. 97-2.

9 The rules committee scenario is arguably more compelling than the merit commission
10 scenario. In Opinion 97-2, the concern was that the judge might favor an attorney who had power
11 over the judge's retention. Here, the concern runs parallel: the judge sits on a committee that is being
12 asked to change a rule because of a defendant's conduct before that judge, and the defendant was
13 openly discussed during the comment period. An objective observer could reasonably question
14 whether the judge's participation in committee deliberations about the defendant's conduct (and the
15 judge's exposure to advocacy characterizing that conduct) would influence the judge's rulings in the
16 pending litigation. Also, as it may appear to an objective outside observer, the Hon D. Metcalf may
17 also have an institutional interest in the outcome of the committee's work, given that the petition is
18 based on conduct occurring in the judge's own courtroom.

20 Accordingly, the judge's participation on the rules committee that discussed the defendant's
21 conduct and a petition brought by ongoing litigants currently before the judge's division, creates a
22 conflict not created by the judge's role as fact finder. It is extrajudicial.

24 Further, The convergence of the judge's adjudicative role and committee role with respect to
25 the same litigant's conduct creates a situation where the judge has been exposed to *ex parte* advocacy
26 about the litigant outside the courtroom, in a forum where the litigant had no opportunity to respond,

1 and where the judge may have formed or expressed views about the litigant's conduct. For the
2 foregoing reasons, the defendant moves the presiding judge to disqualify judge Metcalf and moves
3 this honorable court to re-assign this matter, either to another judge in Pima county, or to a judge in
4 another county in the event the court cannot find a suitable division for this matter.
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6
7 RESPECTFULLY SUBMITTED this _4th_ day of September, 2026.
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9 **RESNICK LAW GROUP, PLLC.**

10 By: /s/ Mark R. Resnick
11 Mark R. Resnick
12 Attorney for Defendant
13

14 Electronically Filed and electronically distributed to the following parties:

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16 PIMA COUNTY SUPERIOR COURT

17 The Honorable D. Metcalf
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