

<p>In Re the Matter of:</p> <p>Colorado Springs City Counsel, (sic)</p> <p>Claimant,</p> <p>v.</p> <p>Helen Collins,</p> <p>Respondent.</p>	
<p>Helen Collins 632 Lakewood Circle Colorado Springs CO 80910</p>	<p>JAG Case No. : 2015-1169A</p>
<p><b>MOTION TO REJECT/RECUSE HEARING OFFICER</b></p>	

Defendant moves to recuse Boyd N. Boland from hearing any aspect of the above case for the following reasons stated in this motion and in its attached affidavits.

1. This motion is filed under standards in Civil Procedure Rule 97, the Canons of Judicial Conduct, and state and federal constitutional guarantees to due process of law, equal protection of the law, and fair hearing in all government actions. Rules quoted here for judges also apply to hearing officers and ex-judges like Boland.
2. Boyd Boland is not qualified to be a hearing officer in this case. The facts to support this motion are stated in the attached affidavit.
3. The Fourteenth Amendment due process and equal protection clauses create a right to a fair and impartial hearing and trial. An impartial judge is a necessary element of that right. An attached affidavit show incompetence and bias in fact and in appearance, and improper temperament to preside in this case. Each alone is sufficient to require his disqualification, rejection, and recusal.
4. Due process demands a fair and impartial hearing by a neutral and detached magistrate. Gerstein v. Pugh, 420 U.S. 103 (1975); Ward v. Village of Monroe, 409 U.S. 57, 62 (1972). A right to an impartial judge is so basic to due process that courts can never treat its infraction as harmless error. Chapman v. California, 386 U.S. 18, 23 (1967). "...the tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial..." Berger v. United States, 255 U.S. 22, 35-6 (1921).

5. A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he has a personal bias or prejudice. He may believe in his own fairness but has a duty to eliminate every semblance of reasonable doubt or suspicion that a fair and impartial trial or hearing may be denied. Zoline v. Telluride Lodge Assn., 721 P.2d 635 (Colo. 1987). See also Johnson v. District Court, 674 P.2d 952, 956 (Colo. 1984). Also, “we have previously noted that basic to our system of justice is the precept that a judge must be free of all taint of bias and partiality” to secure confidence of litigants immediately involved and to retain public respect and secure willing and ready obedience of the judgment. People v. District Court, 192 Colo. 503, 507, 560 P.2d 828 , 831 (1977); Nordloh v. Packard, 45 Colo. 515, 521. A reasonable question as to impartiality requires disqualification. Wood Homes v. Ft. Collins, 670 P.2d 9 (Colo. App. 1983). A reasonable inference of a “bent of mind” preventing a judge from dealing fairly with a party seeking recusal compels disqualification. Wright v. District Court, 731 P.2d 661 (Co. 1987).

6. Even appearance of bias or prejudice is sufficient grounds for disqualification. It is an abuse of discretion and reversible error if that judge does not withdraw from the case even though he believes the statements are false or that the meaning attributed to them by the party seeking recusal is erroneous. Wright, supra; Hammons v. Birket, 759 P.2d 783 (Colo. App. 1988). Appearances can damage public confidence in the courts just as actual prejudice or bias. A trial judge must strictly avoid any appearance of bias or prejudice. Commonwealth Coatings Corp. v. Continental Casualty Co. 393 U.S. 145 (1958). A judge should “recuse himself whenever...he believes his impartiality can reasonably be questioned.” A.B.A. Standards, The Function of the Trial Judge, 1.7. Departure from this principle shocks the sense of justice. A party wants his case justly determined and the state should have the same interest. People v. Hawkins, 560 P.2d 833. When a judge so manifests an attitude of hostility or ill will that impartiality can reasonably be questioned, disqualification is mandatory. S.S. v. Wakefield, 764 P.2d 70 (1988).

7. A judge ruling on a motion to disqualify himself cannot pass on the truth of the statements of fact in the motion and supporting affidavit, but must accept statements of fact as true. The documents speak for themselves and, if legally adequate in reporting actual events and statements, compel disqualification. Johnson, supra; also In re Goelmer, 770 P.2d 1387 (Co. App. 1989). As stated in Hawkins, supra, citing People ex re. Burke v. District Court, 60 Colo. 1, 8-9 (1915): “The change of judge is conditioned not only upon actual fact of his prejudice, but upon the imputation of it...a judge can neither reject the pleading, nor disregard the facts alleged therein...the finding in such matter is a finding of law, and not of fact...(thus) the change must be made, and the truth of the matter shall not be open to question.”

8. Rule 97 does not allow the filing of counter-affidavits by the opposing party. Johnson, supra. If the judge finds the affidavit legally sufficient, he loses all jurisdiction in the matter. He cannot appoint the successor judge. Aaberg v. District Court, 136 Colo. 525, 319 P.2d 491 (1957). He cannot rule on pending motions or issue other orders. Upon the filing of the motion, all other proceedings in the case shall be suspended until a ruling is made thereon, or if such motion is not granted, until a writ of mandamus issues from an appeal. Burke, supra.

9. Motions to disqualify do not require notice. Bracket v. Cleveland, 147 Colo. 328, 363 P.2d 1050 (1961).

10. There is no deadline for a motion under Rule 97. A judge may disqualify himself even though the proper procedures were not followed by the moving party. Beckord v. District Court, 698 P.2d 1323 (Colo. 1985).

11. A judge should not make a response akin to a counter-affidavit regarding his disqualification. Wright, supra. Upon a petition for a writ of mandamus following a denial of a motion to disqualify, the supreme court cannot consider denials or explanations by the judge of statements of fact in the motion and supporting affidavits. Estep v. Hardeman, 705 P.2d 523 (1985).

12. “...the critical test under Wakefield is whether the affidavits...establish facts from which (bias) may reasonably be inferred.” Goebel v. (Denver District Judge) Benton, 16 Brief Times Reporter 879, supreme court case 91 SA 370.

13. C.J.C. 3 a (4): “A judge shall accord to every person who is legally interested in a proceeding, or his or her lawyer, full right to be heard according to law.”  
C.J.C. 2: “A judge...should personally observe high standards of conduct...”  
Canon 2A: “A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 3A (3): “A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom a judge deals in his or her official capacity.”

14. Canon 3C (I) deserves its own paragraph: “A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) A judge has a personal bias or prejudice concerning a party...”

Based on the foregoing statements of law as applied to the facts contained in the attached affidavit and exhibit, defendant moves that Boyd Boland be disqualified and/or recuse himself from any further actions in this case.

Submitted,

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Helen Collins  
632 Lakewood Circle  
Colo. Spgs. CO 80910  
(719) 538-4458

## AFFIDAVIT OF HELEN COLLINS

1. If this motion be denied, I will appeal that denial to the district court, court of appeals, and state supreme court before any hearing begins. I also will file pre-trial motions, which require a hearing officer who is unbiased, honest, neutral, responsive, and knows the law, not someone bought in advance by the City.
2. Boyd Boland tried to conduct telephonic meetings, when I have always said in writing all contacts must be in a public hearing, recorded, transcribed, and open to the media. That applies to every part of the case, such as my arraignment, and a formal written list of charges. Neither has yet been provided. He shows total indifference to the appearance and reality of neutrality and the need to provide me with a fair hearing and due process of law under the Fourteenth Amendment.
3. Exhibit 1 is the emailed Order. It shows Boland's reckless disregard for law and fairness in this case. Section 5 of resolution 58-13 is quoted in the Order. It says "...City Council will elect, in its sole discretion, to either serve as the hearing body or appoint a hearing officer to conduct the proceedings." It is clear that only Council may appoint a hearing officer, but DID NOT DO SO HERE. Respondent is a member of the City Council and attended all formal meetings. Boyd Boland was NEVER legally appointed hearing officer by the Council. Respondent has a right to vote on all Council agenda items and this never came up. Even were there a secret Council meeting, it must be publicly posted and voted on publicly State Open Meetings law requires no decision or action may be taken at a secret meeting. Boland was so eager to collect his money from the City, he did not care that he lacked jurisdiction to serve as the hearing officer. The first duty of any competent judge is to verify he has jurisdiction to act. Boland is acting without jurisdiction, which casts grave doubt on his competence and neutrality. His willfully false statement on page 2, "I have been appointed as the hearing officer to conduct the proceedings," shows he is not truthful. He has not and cannot produce any document of a valid appointment. I have a right to a hearing officer who is honest and can distinguish fact from fiction.
4. Because Boland was not legally appointed by Council, he has no right to issue an Order, and any such Order is void from the start.
5. Boland also says on page 2 the parties can decide the rules of the hearing. That is stunning. Council cannot prosecute me and make up the rules for due process retroactively, after the alleged offense. I am not an attorney and would be unfairly pitted against the City, which has 28 lawyers on staff, plus two special lawyers hired by the City in this case to advise the IEC and the Council. If due process rules are decided by a vote at a status conference, I will lose 2-to-1 by the votes of the Council members (agents?) and their paid hearing officer.

6. Rule 5A quoted in the Order says the proceedings are to be “conducted publicly.” The status conference was ordered for a private office, not a public facility. There is no evidence that cubicle could accommodate four TV cameras, four camera operators, four TV reporters, radio station employees, two or more newspaper reporters, and the general public.. Boland has shown his indifference to following the ordinance by his intemperate unilateral dictates.

7. Boland set the time and place for the conference without consulting the parties for their schedules and conflicts. That shows a callous disregard of standard judicial protocol. He imperiously ordered me to attend in person, even were I to obtain an attorney. He has no jurisdiction to order me to do anything.

8. I have always demanded in writing that all proceedings be recorded. Boland says his company does not bother with that. That means the proceedings will be off the record. I will not be able to appeal without an authenticated transcript. A defendant is not required to hire a court reporter at his expense in a judicial-type proceeding, particularly when he cannot recover his costs even if he wins.

9. Order (3) dictates I must meet privately with those accusing me, to create the rules. How can I compel eight other council members to attend? All are hostile to me. How do I arrange a time and location convenient to nine calendars? This illegal Order is laughably naïve.

10. The results of that hypothetical conference are to be served “on all other parties” (plural). LOOK at the caption. The only two parties are the “City Counsel” (a non-existent entity), and me. Should I assume Boland can't spell but meant “Council,” or that he signs orders without reading them? Do I send eight separate emails to eight council members? Who else is a (secret) party?

11. Boland anticipated this motion and said it must be served by email “on all other parties” (section 5). To add to the confusion, he lists the recipients on his Certificate of Service as me, the attorney for the IEC, the attorney advising the Council, and the president of the Council (but not other council members). Are they the parties? Since when is the attorney for the IEC a party to this case? Is the IEC a party? Is the council president a party? Is the Council's special attorney a party? Is she representing all Council (except me?) or Merv Bennett? I cannot comply with an unintelligible and illegal Order by a man with no jurisdiction to issue orders, so this motion will be made only to Boland. That is the standard practice in disqualifying someone from acting in a judicial capacity. It is not a motion subject to argument or legal challenge or counter-affidavit. Under state law, Boland has a moral and legal duty to recuse himself without delay. See authorities cited in attached motion.

12. Boyd Boland has been openly offered \$450 per hour (or more) by the City, listed as a party to this prosecution. His duty is clearly to find for his paying "client" and against me. It is beyond shameful for him to take a case involving a political dispute between me and other members of city government, and to take taxpayer money for that hit. Any member of the public learning of this payment would be shocked by such overt and cynical bribery. Boyd Boland has been given a contract so the prosecution can take out a figurative "contract" on me to destroy my political reputation and career. He needs to repent, reconsider, and recuse himself.

I have read this Affidavit and state it is true to the best of my knowledge and belief.

\_\_\_\_\_  
Helen Collins

COUNTY OF EL PASO  
STATE OF COLORADO

This Affidavit was sworn to and subscribed before me this \_\_\_\_\_th day of  
October, 2015.

\_\_\_\_\_  
Notary Public

SEAL

\_\_\_\_\_  
Address of Notary Public

My commission expires: \_\_\_\_\_