

No. _____

MARCH TERM, 2018

In The Supreme Court of the United States

In re WILLIAM A. LINDSEY, Petitioner

v.

STATE OF COLORADO, Respondent

Petition for Writ of Mandamus

WILLIAM A. LINDSEY
Unrepresented Inmate
DOC# 169718
Bent County Correctional Facility
11560 CO. RD. FF. 75
Las Animas, CO 81054

Question Presented for Review

Can the Colorado Supreme Court legally deny Writ of Mandamus without opinion, when the only remedy to denial of a Motion to Recuse trial judge is through original proceeding in Supreme Court?

Does the Colorado Supreme Court have authority not to entertain an appeal of a motion to disqualify through Mandamus when the Petitioner has no other remedy available and statute and authority establishes that he is entitled to Mandamus review?

PARTIES

William A. Lindsey, Petitioner
Inmate at Bent County Correctional Facility
11560 CO. RD. FF. 75
Las Animas, CO 81054

Chief Justice Nancy E. Rice, Justice Nathan B. Coats, Justice Monica M. Marquez,
Justice Brian D. Boatright, Justice William W. Hood, III, Justice Richard L. Gabriel,
Justice Melissa Hart
Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Office of the Attorney General
Cynthia H. Coffman
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

John Hickenlooper
Office of the Governor
136 State Capitol Bldg
Denver, CO 80203

District Court Judge Todd L. Vriesman
Jefferson Combined Court
100 Jefferson County Parkway
Golden, CO 80401

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Constitutional Provisions

Fourteenth Amendment

Article XIV, Section 1 U.S.C.

Federal Statutes

28 U.S.C. § 1651 (a)

28 U.S.C. § 455 (a)

State Statutes

C.R.C.P. 21

Colorado Code of Judicial Conduct 2.11

C.R.S. 16-6-201

Crim. P. 21 (b) (2)

Code of Judicial Discipline 95-01

C.R.S. 24-51-1105

Colorado Appellate Rule 21

PRIOR OPINION

The opinion whose review is sought is unpublished opinion without comment in the (Appendix at **A p. 23, 24**). The state district court opinion is reproduced in the (Appendix at **B p. 96**)

JURISDICTION

Petitioner seeks the Court review of Order(s) entered on September 12, 2017 an October 5, 2017, by the Colorado Supreme Court on appeal by original proceeding Writ of Mandamus of the decision of District Court, Jefferson County, Colorado Judge in the denial of motion to disqualify by attacking the facts of the motion and truth of the affidavits, while agreeing with some of the allegations in the motion in contravention of state law by Writ of Mandamus pursuant to the jurisdiction by 28 U.S.C. § 1651 (a).

CONSTITUTIONAL PROVISIONS

Article XIV, Section 1, United States Constitution in pertinent part provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATUTES INVOLVED

Colorado Revised Statutes Section 16-6-201, Colorado Rules of Criminal Procedure 21, and Colorado Code of Judicial Conduct 2.11 appear in this petition.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Petitioner, Lindsey was the defendant in *People v. Lindsey*, Case No.: 2012CR1487 (unpublished). On or about July, 2014, Judge Vriesman was assigned to preside over the case. A jury found Petitioner guilty of six counts of Securities Fraud; two counts of Securities Fraud – course of business; and four counts of theft over \$20,000.00. On August 5th, 2015, he was sentenced to 24 years in the Colorado Department of Corrections. On August 11, 2015, Petitioner filed a notice of appeal in the Colorado Court of Appeals Case No.: 15CA1368.

In the spring of 2017, while in direct appeal, Petitioner was made aware and received documents that show Judge Vriesman had prior 20 year relationship and some economic interest with a witness and parties related to his criminal case.

On June 12, 2017, Petitioner moved a Motion to Disqualify; in district court consisting of the Motion stating grounds, with evidence attached and (3) three affidavits by non-related credible persons. The (3) three affidavits are actually all Federal Employees, (2) two of which are Federal Investigators. (Appendix B p. 97)

On June 23, 2017, Judge Vriesman denied the motion and in his denial he did not address the legal sufficiency of the motion and affidavits, instead he ruled that there are no pending proceedings, he attacked the facts set forth in the motion and rebutted the affiants statements by writing that they “**do not**” have personal knowledge of the events, and concede that he

represented the client that the witness represented at the same time over the property in question in Motion to Disqualify. (Appendix B p. 97)

Subsequently, Mr. Lindsey filed a C.R.C.P. 106 Writ of Mandamus in Jefferson County District Court, Case No.: 2017CV236 (unpublished). (Appendix C p. 150)

Upon learning that courts of co-equal jurisdiction do not have supervisory power over courts of coordinate jurisdiction and “[t]he jurisdiction of the trial court does not extend to review of the decisions and judgment of a court of coordinate jurisdiction.” *State ex rel. Department of Corrections v. Pena*, 911 P.2d 48, 57 (Colo. 1996) Petitioner, petition an Original Proceeding in the Colorado Supreme Court (Appendix A p. 25)

STATEMENT OF THE CASE

The petition in proper person, filed on August 9, 2017, Case No.: 17SA193 cited Colorado Revised Statute 16-6-201 (3) and Crim. P. 21(b) (3) that the motion must be verified and supported by the affidavits of at least two credible persons not related to the defendant, stating facts showing the existence for grounds for disqualification and that trial judge did not accept the affidavits as true or the facts alleged therein. (Appendix A p. 25). Also, Petitioner, outline the good cause for filing outside of the time limits. (Appendix A p. 26) and the facts that merit disqualification (Appendix A p. 32). Moreover, Petitioner submits additional documents in support of the Motion to Disqualify. (Appendix A p. 35). Petitioner specifically, request because there being no dispute as to any material fact a summary judgment compelling trial judge to rule

on the legal sufficiency of the petition. Additionally, he request that the court “broadly construe” his pro se constitutional allegations citing; *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Finally he included an affidavit attesting to the truthfulness of his statements. (Appendix A p. 36)

On September 12, 2017, the Colorado Supreme Court En Banc denied the Writ of Mandamus without comment or opinion citing no authority, statute, or court rule, essentially affirming judge Vriesman’s denial in the face of it’s own ruling, authority, and years of precedence that state the opposite. (Appendix A p. 24)

Promptly, Petitioner moved a Petition for Rehearing, citing that the court in refusing to entertain writ of mandamus has violated its own stare decisis as it is held that the legal sufficiency of a motion to disqualify is a question of law among other things. (Appendix A p. 37) On September 27, 2017, the denied the rehearing. See (Appendix A p. 41)

Upon learning of a prior 20 years professional and personal relationship with the People’s witness Lino S. Lipinsky and (3) three Colorado Supreme Court Justices who did not disclose this fact to Petitioner, and in (2) two cases these Justices were partners at the same law firm with the People’s witness. Petitioner moved a motion to recuse with affidavits in support with evidence (Appendix A p. 42), on September 29, 2017. On October 5, 2017, the Colorado Supreme Court denied the Motion for recusal without entertaining it, stating, “[b]ecause the

Petitioner's case is closed, the Court will take no action on Petitioner's Motion for Recusal."

(Appendix A p. 23)

ARGUMENT

Relief Sought

Petitioner, William A. Lindsey, Petitioner in original proceeding Case No.: 17SA193, captioned as *William A. Lindsey v. 1st Judicial District Court Judge Todd L. Vriesman*, respectfully moves this Court, pursuant to the provisions of 28 U.S.C. § 1651, to grant a writ of mandamus directing the Colorado Supreme Court, to vacate their order of September 12, 2017, denying petitioner, Petition for Writ of Mandamus (Appendix A p. 24) and rule de novo pursuant to the stated authority on the motion to disqualify judge pursuant Crim. P. 21 (b)(2); Colorado Code of Judicial Conduct Rule 2.11; and 16-6-201 C.R.S. Case No.: 12CR1487 *People v. Lindsey* (unpublished) filed June 12, 2017, in the First Judicial District Court Jefferson County, Colorado. Mandamus is justified on ground that the Petitioner has (1) no other adequate means to attain relief by reason the highest State Court refused to grant mandamus to review denial motion to disqualify against state law and well settled authority an the Court is the highest State Court, (2) Appellant review is not adequate in this case by reason the motion to disqualify was filed post-conviction well after trial and well into briefing on direct appeal in Colorado Court of Appeals, (3) Petitioner has a 'clear and indisputable' right to issuance of the Writ under state law, court rule, and authority, and (4) This Court's grant of the writ is appropriate under these circumstances by the highest State Court failure to abide by state law, thus depriving Petitioner of due process under the Fourteenth Amendment of the Federal Constitution, disqualification is

justified on ground that motion and affidavit are legally sufficient and state facts that a reasonable person would construe the judge to be bias under 16-6-201 C.R.S., and Colorado Criminal Procedure Rule 21 and he failed his obligation to disclose the aforementioned facts before, during or after trial and that he willfully violated state law by attacking the truth of the affiants statements and attempt at explaining away the circumstance, when in-fact he confirmed the petitioners claim by acknowledging that the documents submitted with the motion “demonstrate on their face” that he represented the owner of the property that petitioner was under contract to buy in bankruptcy and he and People’s witness Lino S. Lipinsky represented the owner of the property. (Appendix **B p. 133**)

After the denial Petitioner promptly petition via Colorado Rule of Civil Procedure 106 Mandamus Case No.: 17CV236, captioned as *William A. Lindsey v. Todd L. Vriesman* in District Court Jefferson County, Colorado. (Appendix **C p. 150**) On July 14, 2017, Chief Judge, 1st Judicial District, Philip J. McNulty issue ‘Recusal Order,’ stating, “that a potential conflict of interest exists with [all] judges in the First Judicial District.”... An assigned pursuant C.J.D. 95-01 an outside judge. (Appendix **C p. 147**) Senior Justice Alex Martinez assigned pursuant Colorado Revised Statute Section 24-51-1105 to preside over the action. After Assistant Solicitor General Matthew D. Grove filed motion to Dismiss, Petitioner learned that C.R.C.P. 106 Writ of Mandamus was not proper in this case by reason courts of co-equal jurisdiction do not have supervisory power over courts of coordinate jurisdiction. *State ex rel. Department of Corrections v. Pena*, 911 P.2d 48, 57 (Colo. 1996). Interestingly, Solicitor General in the Motion to Dismiss **stated that writ of mandamus should be filed in a supervisory court, e.g., Colorado**

Supreme Court. Subsequently, Justice Martinez dismissed the case citing, "... the relief sought is not available pursuant to the court's jurisdiction under C.R.C.P. 106..." On August 24, 2017.
(Appendix C p. 145)

The Petitioner sought a petition in original proceeding in the nature of a writ of mandamus as all state rules and authority deemed proper in situations such as this. See
(Appendix A p. 25)

Original Proceeding is Appropriate

When a trial judge or a reviewing judge denies a defendant's motion to change judge, the defendant may raise the issue before trial by original proceeding under Colorado Appellant Rule 21 or on direct appeal after conviction. In this case direct appeal is not feasible because petitioner is in direct appeal and when he discovered that trial judge had bias or the appearance of bias he made denials or explanations. Thus, Petitioner, being procedurally barred from directly appealing trial courts denial sought on original proceeding in the Colorado Supreme Court pursuant C.A.R. 21 Writ of Mandamus.

In this State, an original proceeding is the appropriate remedy for reviewing a denial of a motion to recuse the trial judge when there is no plain, speedy, an adequate remedy available. *Brewster v. District Court of the Seventh Judicial District*, 811 P.2d 812 (Colo. 1991) ("Original proceeding was brought to obtain writ of mandamus requiring trial judge in criminal case to

recuse himself. The Supreme Court Erickson, J., held that motion to recuse and supporting affidavits were sufficient to cause recusal.) (**Rule made absolute**).

This state has consistently held that mandamus is proper when a direct appeal is not available in case of motions to recuse judge in a litany of cases, far too many to name. Although the right to recuse a judge is not constitutional it is statutory, Colorado law offers three inter-related guideposts for judicial disqualification: Colorado Rule of Criminal Procedure 21(b), Section 16-6-201 of the Colorado Revised Statutes, and Canon 2.11 of the Colorado Code of Judicial Conduct. Rule 21(b) and Section 16-6-201 both provide that judge “must” disqualify himself when the motion and affidavits state facts showing the existence of grounds for disqualification. Canon 2.11 of Conduct is slightly more expansive stating a judge has a duty to recuse himself if his partiality can be reasonably questioned or known of such facts.

State Standard of Review

The Colorado Supreme Court held that when reviewing a trial courts ruling on a motion to recuse de novo. *People v. Flockhart*, 2013 CO 42, 91, 44, 304 p.3D 227; *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002) (Judicial disqualification decision are subject to de novo review.) Judicial bias against a criminal defendant constitutes structural error requiring reversal. *Kratsinger v. People*, 219 P.3d 1054, 1059 n.1 (Colo. 2009) The Colorado Supreme Court in denying the Writ of Mandamus without comment failed its statutory duty. See (Appendix A **p. 24**) This duty was triggered by trial judge’s denial attacking the affidavits and denying and

attempting to explain away the motion. This conduct is expressly forbidden under state. Moreover, the Colorado Supreme Court did not apply its own standard of review to the petition for writ of mandamus including the above and the following:

The reviewing court must accept as true the statements of facts in the motion and affidavits. Denials or explanations by the judge cannot be considered by the appellate court in evaluating such motion. *Estep v. Hardeman*, 705 P.2d 523, 526 (Colo. 1985).

The analysis must be confined to the four corners of the motion and supporting affidavits. *Klinck v. District Court*, 876 P.2d 1270, 1275 (Colo. 1994) (citing *Brewster v. District Court*, 811 P.2d 812, 814 (Colo. 1991))

The Colorado Supreme Court cited no authority or court rule in this case, nor does it explain why petition is incorrect and trial judge has the authority to attack the affidavits, deny and explain the facts without a hearing contrary to statute and court rule.

Section 16-6-201(3) C.R.S. provides in pertinent part, "After disqualifying himself the judge may require a full hearing upon the issues raised by the affidavits and shall request that another judge conduct the hearing. The other judge shall make findings of facts with regard thereto, and such findings shall be included as part of the trial court record."

Furthermore, language in Colorado Criminal Procedure Rule 21(b) are identical to those in Section 16-6-201(3).

REASONS FOR GRANTING THE WRIT

I am of the view that the district court's refusal to comply with State laws, Colorado Supreme Courts previous mandates, an the Fourteenth Amendment in *People v. Lindsey*, Case No.: 2012CR1487, Motion to Disqualify (unpublished) and the refusal to entertain the appeal of the decision can be only corrected by writ of mandamus, to compel the Colorado Supreme Court to follow its own mandate as required in similar cases.

Appropriateness of Mandamus

It is well-settled in most jurisdictions that mandamus petitions are the proper procedure for appellate court to review a district judge for disqualification from a case in which his impartiality might reasonably be questioned.

A judge's refusal to recuse himself in the face of a substantial challenge casts a shadow not only over the individual litigation but over the integrity of the [state] judicial process as a whole. The shadow should be dispelled at the earliest possible opportunity by an authoritative judgment either upholding or rejecting the challenge. In recognition of this point we have been "liberal" in allowing the use of the extraordinary writ of mandamus to review orders denying motions to disqualify. *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710 (7th Cir. 1986), at 712 (References deleted) (**emphasis added**)

Moreover, few situations are more appropriate for mandamus than a judge's wrongful refusal to disqualify himself.

This court has long taken the position that there are "few situations more appropriate for mandamus than a judge's clearly wrongful refusal to disqualify himself." *In re*

International Business Machines Corp., 618 F.2d 923 (2nd Cir. 1980), at 926 citing *Rosen v. Sugarman*, 357 F.2d 794, 797 (2nd cir. 1966).

Although mandamus may be opposed on the premise that it should not be used as a substitute for appeal, petitioner contends that he has, (1) no other adequate means to attain relief, (2) Federal and State law affirmatively show that he has a right to issuance of mandamus, and (3) mandamus is appropriate under these circumstances. See *Hollingsworth v. Perry*, 130 S.Ct. 705, 558 U.S. 183. Petitioner also contends that no party subject to Anglo American Judicial System should be required to submit to a presiding judge who has a prejudicial bent of mind or even the appearance thereof; expecting that there will be another opportunity for justice after final judgment has been rendered. Further, in this state upon prevailing in appeal the defendant is retried in front of the very same judge, and in this case, judge's partiality is questioned. Rather, mandamus should be viewed as a means of avoiding a needless and judicially inefficient ordeal.

[D]ue process...[requires] that a judge who is otherwise qualified to preside at trial or other proceeding must be sufficiently neutral and free of disposition to be able to render a fair decision. **No person should be required to stand trial before a judge with a 'bent of mind'**. *Collins v. Dixie Transport, Inc.*, 543 So.2d 160 (1989), at 166 citing *Berger v. United States*, 255 U.S. 22, 33, 41 S.Ct. 230, 233 65 L.Ed. 481 (1921); *Wolfram Modern Legal Ethics* § 17.5.5 Independence and Neutrality, p. 989 (1986). (**emphasis added**)

Obligation to Disclose

According to *Shaman, et al.*, and the case law cited to support his determination, "... it is the obligation of a judge to disclose all facts that might be grounds for disqualification." Judicial Conduct and Ethics, 2 ed., Shaman, J.M., Lubet, S., Alfini, J.J., Michie Law Pub., Charlottesville, V.A. (1995), p. 146.

Trial judge did not disclose his 20 year relationship with the state witness, nor that he and said witness represent same client that witness testified about. Further, the witness testified about a contract that witness and trial judge as attorney drafted and approved about client's property that Petitioner's rents and payments made by Petitioner went to witness law firm and trial judge's as attorney law firm.

No Discretion In Motion To Disqualify

According to Colorado Statute Section 16-6-201(3), disqualification is required whenever the verified motion and supporting affidavits state facts showing grounds for disqualification. Colorado Rules of Criminal Procedure 21(b)(3) use identical language, "[I]f the motion and supporting affidavits state facts showing grounds for disqualification, the judge shall immediately enter an order disqualifying himself or herself."

It may be argued that the determination of the judge concerned should be afforded great weight and should not be disturbed unless clearly erroneous. However, in the matter under

review, it is clear that Judge Todd L. Vriesman engaged in actions that, in the aggregate, constitute serious and erroneous abuse of judicial discretion.

The Judge has the right, and it is his duty to pass upon the adequacy of the motion seeking disqualification of a judge as a matter of law. *Walker v. People*, 126 Colo. 135, 248 P.2d 287 (1952). Judge Vriesman overstepped his judicial authority and abused discretion by attacking the truth of the facts stated in the affidavits and motion. The Colorado Supreme Court and other jurisdiction have consistently held that as a matter of judicial policy, courts “**must**” take as true, for purposes of a motion to disqualify, facts stated in the affidavits and motion; *People v. District Court*, 192 Colo. 503, 560 P.2d 828 (1977); *People v. Botham*, 629 P.2d 589 (Colo. 1981); *Cominsky v. District Court*, 926 P.2d 539 (Colo. 1996); *People v. Cook*, 22 P.3d 947 (Colo. App. 2000); *Kane v. County Court, Jefferson County*, 192 P.3d 443 (Colo. App. 2008).

If the motion for disqualification is sufficient in form, and whether the allegations therein contained be in fact true or false, if they be set forth as facts they must be so accepted, and the judge may perform no further duty than that of entering an order of disqualification. **He may not pass on the facts.** *Walker v. People*, 126 Colo. 135, 248 P.2d 287 (1952) (**emphasis added**)

The trial judge has no discretion in the matter of recusing himself upon finding the affidavits sufficient under the rule [16-6-201 C.R.S. and Crim. P. 21] to allege prejudice. He immediately loses all jurisdictions in the matter except to grant the change. *People v. District Court*, 192 Colo. 503, 560 P.2d 828 (1977)

Sufficiency is a Matter of Law

The finding of sufficiency in a motion for change of judge is a finding of law, and not fact, and this is true whether it be the finding of the trial court or an appellate tribunal. *People ex rel. Burke v. District Court*, 60 Colo. 1, 152 P.149 (1915); *People ex rel. Bennet v. District Court*, 84 Colo. 367, 220 P. 663 (1928).

The trial court must rule on the legal sufficiency of the motion to recuse and accompanying affidavits, subject to the independent review of the appellate court. *Smith v. District Court*, 629 P.2d 1055, 1056 (Colo. 1981). Further, in Colorado if the motion is sufficient in form and if the allegations are sufficient and factual, the judge must remove himself from the case by entering a self-disqualifying order. *People v. Arledge*, 938 P.3d 160 (Colo. 1997). As a matter of judicial policy, the judge is required to accept as true the facts stated in the motion and accompanying affidavits. *Wilkerson v. District Court*, 925 P.2d 1373 (Colo. 1996); *Klinck v. District Court*, 876 P.2d 1270 (Colo. 1994). The facts set forth in affidavits supporting disqualification are not subject to the inquiry, nor is the judge to consider other facts in the case or any counter – affidavits. *Klinck*; *supra*.

Due Process Violation

It is axiomatic that “[a] fair trial in a fair tribunal is a basic requirement of due process.” *Muchison, In re*, 75 S.Ct. 623, 349 U.S. 133 (U.S. Mich. 1955) The due process clause of the

Fourteenth Amendment requires recusal where the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. *United States Fourteenth Amendment. Hucles v. Ryan*, 752 F.3d 768 (C.A. 9 (Ariz.) 2014). At a minimum, procedural due process requires a hearing before an impartial tribunal. *Shanko v. Lake County*, 116 F.Supp.3d 1055 (N.D. Cal. 2015). Interestingly, Colorado Statutes are similar to *Federal 28 U.S.C. § 455(a)* which state “a judge has a duty to recuse himself if his impartiality can reasonably be questioned.” *United States v. Snyder*, 235 F.3d 42 (C.A. 1 (Mass.) 2000). In federal system when a motion to recuse is denied it is proper to seek mandamus.

State and Federal law provides the process to disqualify a judge, these rules also provide the ethical principle elaborated by *Shaman*; supra, and supported by case law that, “It is not the duty of the parties to search out disqualifying facts about the judge ... it is the judge’s obligation to disclose all possibly disqualifying fact.” As soon as Petitioner discovered facts that merit disqualification he moved a motion to recuse. The motion was filed in accordance to the process outlined in Court Rule 21 and Subsection 16-6-201 C.R.S. stating (1) the fact that he discovered these facts “**in Spring of 2017**” (Appendix B p. 99) thus, showing good cause for filing outside of the time limits, (2) trial judge did not disclose these facts before, during, and after trial, (3) trial judge had a 20 year personal relationship with state witness, (4) trial judge as an attorney represent same client that witness testified about, (5) the Petitioner was under a contract with the client an trial judge as attorney and witness both drafted and approved the contract, and (6) trial judge’s firm profit from a civil judgment against petitioner an judge continue to have relationship with firm, among other things. (Appendix B p. 100-101)

Due process provides a means for trial judge to deny a motion to disqualify namely, timeliness and sufficiency of motion and affidavits; these are deemed questions of law. *People v. District Court*, 192 Colo. 503, 560 P.2d 828 (1977).

Trial judge deprived Petitioner of Federal due process rights. The right to disqualify a judge is not constitutional it is statutory, however when a state grants a statutory right it “**must**” conform to due process clauses of the Fourteenth Amendment.

The United States Supreme Court has made it clear that ‘a fair trial in a fair tribunal is basic requirement of due process,’ ... in courts. *Michigan Department of Social Services v. Shalala*, 859 F.Supp. 1113, 1123 (W.D. Mich. 1994) (quoting *Withrow v. Larkin*, 421 U.S. 35, 36, 95 S.Ct. 1456, 1459, 43 L.Ed.2d 712 (1975)). Thus, as stated by Justice Kennedy in his concurring opinion in a Supreme Court case construing the analogous federal statute on judicial disqualification, “[i]f through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source,” *Liteky v. U.S.*, 540, 563, 114 S.Ct. 1147, 1161, 127 L.Ed.2d 474 (1994)(Kennedy, J., concurring) This is because, as our court of appeals has declared, **“[I]itigants ought not have to face a judge where there is a reasonable question of impartiality...”** *Alexander v. Primerica Holdings, Inc.*, 10 F.3d. 155, 162 (3d Cir. 1993) *D.B. v. Ocean Tp. Board of Education*, 985 F.Supp. 457 (D.N.J. 1997), at 540 (**emphasis added**).

Furthermore, no judge should have ultimate authority over what constitutes his or her own conflict of interest.

Mandamus is, of course, a proper means of securing compliance with a mandate, where a lower court has failed or refused to comply with the mandate of a higher court, indeed, this Court has described that as a “high function of mandamus,” See *U.S. v. U.S District Court*, 334 U.S. at 264 (citations omitted); See also, *In re Potts*, 17 S.Ct. 520, 166 U.S. 263; *Gaines v. Rugg*, 13 S.Ct. 611, 148 U.S. 228; *In re Washington and G.R. CO.*, 140 U.S. 91. Accordingly, mandamus is appropriate here if relief cannot be obtained by appeal.

CONCLUSION

The grant of this Writ of Mandamus is not only important to the Petitioner but to all citizens of this State, by reason the importance of a judicial officer adhering to statutory law cannot be infringed upon by unconstitutionally permissible actions that result in due process violations as the bear minimum requirements of a hearing before an impartial tribunal. Petitioner’s due process and equal protection rights under the Fourteenth Amendment were, and continue to be severely abridged in this criminal action by trial judge Vriesman.

Judge Vriesman’s failure to disclose his association with the people’s witness, an his relationship with the property owner among other things deprived Petitioner of the opportunity to bring this association and interest to the attention of the Court of Appeals. Had District Court’s

strong appearance of impropriety been timely addressed, its impartiality might reasonably have been questioned and affected the outcome of the appellate process. The Colorado Supreme Court may also have been more receptive to the petition for mandamus had it been apprised that the Judge was disqualified under 16-6-201 C.R.S., and Colorado Criminal Procedure 21 at the time he made rulings and sentenced Petitioner.

To maintain the integrity of the Anglo American Judicial Systems, the Court must be concerned whether parties received fair and impartial trial in a criminal proceeding. At the risk of undermining the public's confidence in the judicial process, the welfare of the parties must receive priority over other considerations should a violation of § 16-6-201 and Colorado Criminal Procedure 21 occur. In the matter presently under review, Justice requires that the Colorado Supreme Court order be vacated and the issue placed under review. "The guiding consideration is that, that administration of justice should reasonably appear to be disinterested as well as be so in fact." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 870 (1988), 108 S.Ct. 1194, 100 L.Ed.2d 855 quoting *Public Utilities Commission of D.C. v. Pollak*, 343 U.S. 45, 466-467, 72 S.Ct. 813, 822-823, 96 L.Ed. 1068 (1952) (Frankfurter, J., in chambers)

Judge Vriesman's conduct has cast a long shadow on the criminal case an appeal, and recusal is the only remedy that will renew the public's faith in the integrity and fairness of the judicial system, prompt other judges to more carefully search for and disclose grounds for disqualification, and restore impartiality to the litigants in the judicial process. When statutory

standards for recusal are met, as has been demonstrated here, the trial judge must step aside and let another judge, who is not associated with witness or interested, be assigned.

Furthermore, under the extraordinary circumstance created by the new knowledge that Judge Vriesman was disqualified at the time he preside over the case, and pursuant to a finding of willful negligence and prejudicial conduct by the District Court, Petitioner respectfully prays to be relieved from the conviction in Criminal Case 2012CR1487, so that the case can be fairly tried in front of an impartial judge.

In conclusion, Petitioner, William A. Lindsey, respectfully prays that a Writ of Mandamus be issued by this Court directed to respondent, the Supreme Court of Colorado, directing it to vacate its order denying petitioner's petition for Writ of Mandamus for disqualifying him in the criminal action aforementioned above, and to grant all other requested relief as the Court may deem proper.

Respectfully submitted,



WILLIAM A. LINDSEY

DOC# 169718

Unrepresented Inmate

Bent County Correctional Facility

11560 CO. RD. FF. 75

Las Animas, CO

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