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7  
 8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 9 IN AND FOR THE COUNTY OF MOHAVE

11 **STATE OF ARIZONA,**  
 12 Plaintiff,

Case No. CR 2014-01193

13 Vs

**DEFENDANT'S PRETRIAL MOTION  
 FOR DISCLOSURE OF ANY POSSIBLE  
 BASIS FOR JUDICIAL  
 DISQUALIFICATION**

15 **JUSTIN JAMES RECTOR,**  
 16 DEFENDANT.

(ASSIGNED TO HON. LEE JANTZEN)

18  
 19  
 20 Defendant Justin James Rector, by and through undersigned counsel,  
 21 hereby *very respectfully* moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth,  
 22 and Fourteenth Amendments to the United States Constitution, and Article II, §§  
 23 1,3,4,13,15,24 and 32 of the Constitution of Arizona, to thoughtfully reflect and  
 24 reexamine any core beliefs, predispositions or feelings, and reveal on the record any  
 25 possible basis for the recusal of the trial judge in this matter for the reasons expressed  
 26 in the Memorandum attached hereto and incorporated herein.  
 27

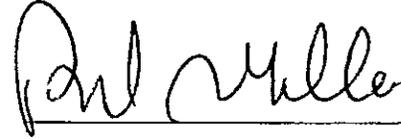


88015CR201401193

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3 RESPECTFULLY SUBMITTED This 9<sup>th</sup> day of March, 2015

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5  
6 By:

  
7 Gerald T. Gavin  
8 Defendant's Co-Counsel



Ron Gilleo  
Defendant's Co-Counsel

9  
10 MEMORANDUM

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12  
13 Mr. Rector is moving for disclosure of any and all possible bases for the  
14 disqualification of the trial judge in this case for any reason. The defense harbors no ill  
15 will, and makes no allegation against this particular judge. Counsel has nothing but the  
16 highest regard for this Judge. That said, Counsel would make this request of any  
17 assigned judge. Defense counsel respectfully makes this request because to not do so  
18 would constitute ineffective assistance of counsel, result in a complete retrial of this  
19 matter, or worse: the execution of Mr. Rector.

20  
21 It cannot be left up to the defendant to assure that the trial judge is impartial; the  
22 duty rests upon the judge to act on any hint of impropriety *sua sponte*. There is  
23 "place[d] upon the judge a personal duty to disclose on the record any circumstances  
24 that may give rise to a reasonable question about his impartiality." United States v.  
25 Murphy, 768 F.2d 1518, 1537 (7<sup>th</sup> Cir. 1985); accord SCA Services v. Morgan, 557 F.2d  
26 110, 117 (7<sup>th</sup> Cir. 1977); United States v. should *disqualify* themselves in proceedings in  
27  
28

1 which their impartiality might reasonably be questioned" ) (emphasis added).

2 Most fundamental to securing a fair trial is the assurance that those who preside  
3 over it – the judges- are themselves above reproach. "Courts, like Cesar's wife, must  
4 be not only virtuous but above suspicion." U'ren v. Bagley, 245 P.2d 1074, 1075 (Ore  
5 1926). The question is not whether the judge is actually biased, but rather whether  
6 there is any hint of putative bias:  
7

8 The question is not whether the Judge is impartial in  
9 fact. It is simply whether another, not knowing whether  
10 or not the Judge is actually impartial, might reasonably  
question his impartiality on the basis of all the circumstances.

11 Rice v. McKenzie, 581 F.2d 1114, 1116-17 (4<sup>th</sup> Cir. 1978). See also Hall v. Smart  
12 Business

13  
14 Even the possibility of prejudice on the "part of the judge"....is too high to be  
15 constitutionally tolerable." Withrow v. Larkin, 421 U.S. 35, 47 (1975); See also Berger v.  
16 United States, 255 U.S. 22, 33-34 (1921); Potashnick v. Port City Construction Co., 609  
17 F.2d 1101, 1111 (5<sup>th</sup> Cir. 1980) (Any question of a judge's impartiality threatens the  
18 purity of the judicial process and its institutions.) Health Services Acquisition Corp. v  
19 Lijeberg, 796 F.2d 796, 800 (5<sup>th</sup> Cir. 1982); King v. State, 271 S.E.2d 630, 634  
20 (Ga.1980).  
21

22 The United States Constitution requires disqualification where there is any hint of  
23 impropriety. The Supreme Court held in In re Murchison, 349 U.S. 133 (1955) that:  
24

25 [a] fair trial in a fair tribunal is a basic requirement of  
26 due process; where there is fairness of course requires  
27 an absence of actual bias in the trial of cases. But our  
28 system of law has always endeavored to prevent even  
*the probability of unfairness*...circumstances and relationships  
must be considered. This court has said, however, that "every

1 procedure which would offer a possible temptation to the  
2 average man as a judge...not to hold the balance nice, clear  
3 and true between the State and the accused, denies the latter  
4 due process of law." Turney v. Ohio, 273 U.S. 510, 532  
5 (1927). [T]o perform its high function in the best way  
6 "justice must satisfy the appearance of justice." Id. at 136  
7 (emphasis added); See also

8 Turney v. Ohio, 273 U.S. 510, 532 (1927); United States v. Columbia Broadcasting Inc.,

9 497 F2d 107, 109 (5<sup>th</sup> Cir. 1974) ("The protection of the integrity and dignity of the  
10 judicial process from any hint or appearance of bias is the palladium of our judicial  
11 system")

12 Therefore, Mr. Rector requests that the trial court reexamine, reevaluate, identify  
13 and disclose all possible bases for his own recusal which ought to be known by Mr.  
14 Rector and his attorneys.

15 "Waivers of constitutional rights not only must be voluntary but must be knowing,  
16 intelligent acts done with sufficient awareness of the relevant circumstances and likely  
17 consequences." Brady v. United States, 397 U.S. 742, 748 (1970); accord Boykin v.  
18 Alabama, 395 U.S. 238, 243-44 (1969) ("with a full understanding of what [it] connotes  
19 and its consequences"); McCarthy v. United States, 349 U.S. 459, 465 (1969); Burgett  
20 v. Texas, 389 U.S. 109 (1967); United States v. Tucker, 404 U.S. 443 (1972).  
21

22 Respectfully, it is requested the Court consider, *inter alia*, the following areas  
23 where the appearance of bias or impropriety may require disqualification:

- 24 a. Whether the judge has interviewed with, expressed interest in, or accepted  
25 employment with a prosecuting agency, especially an agency that prosecutes  
26 at trial or appeal, or seeks to have the death penalty imposed on criminal  
27 defendants, or otherwise aligned with an agency where the appearance of  
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bias undermines the essential neutrality of the Court;

- b. Whether the Court has made any judicial or extrajudicial statements to any person that might indicate the Court has made up its mind about a certain aspect of this case, or about the death penalty.
- c. Whether this Court is a member of any racially-exclusive clubs, or clubs where even though not avowedly discriminatory- there are no minority members?
- d. Whether this Court has ever used derogatory language in reference to members of a minority group?
- e. Whether this Court has ever expressed an opinion regarding the "wasted resources or finances" used to defend capital cases?
- f. Whether this Court has any links to lawyers or witnesses for the prosecution of this case that may rise to the appearance of impropriety?
- g. Whether this Court has any link to the victim's in this case, or has made any statements to or about the victims or victims advocacy groups that would demonstrate an appearance of bias?

WHEREFORE, Mr. Rector moves this Court to reveal in Court and on the record any possible bases for judicial disqualification.

1 ORIGINAL FILED and a copy of the  
2 Forgoing hand-delivered  
3 This 9<sup>th</sup> day of March, 2015, to:

4 Clerk of the Court  
5 401 E Spring Street  
6 Kingman Arizona 86401

7 And copies hand-delivered that  
8 Same date to:

9 Honorable Lee Jantzen  
10 Judge of the Superior Court  
11 Mohave County Courthouse  
12 401 E Spring Street  
13 Kingman Arizona 86401

14 Greg McPhillips  
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23 Client Justin James Rector  
24 Mohave County jail

25 File

26 By: 