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ADVANCE SHEET HEADNOTE
May 12, 2025

2025 CO 19

No. 25SA114, *People v. Chapman* – Disqualification of Chief Prosecutor or of Office Itself – Discretion of Lower Court – Right of Prosecution to Review.

The supreme court holds that the district court erred in granting Toby Joseph Chapman's "Motion for Appointment of Special Prosecutor" pursuant to section 20-1-107(2), C.R.S. (2024). Because Chapman failed to present evidence of special circumstances that would justify disqualification of the entire Eighth Judicial District Attorney's Office, the court reverses the district court's order.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 19

Supreme Court Case No. 25SA114
Interlocutory Appeal from the District Court
Larimer County District Court Case No. 24CR1090
Honorable Regina Marie Walter, Senior Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Toby Joseph Chapman.

Order Reversed

en banc

May 12, 2025

Attorneys for Plaintiff-Appellant:

Gordon P. McLaughlin, District Attorney, Eighth Judicial District
Meghan P. King, Deputy District Attorney
Fort Collins, Colorado

Attorneys for Defendant-Appellee:

McCormick Law PLLC
Matt McCormick
Lakewood, Colorado

PER CURIAM.

PER CURIAM.

¶1 This appeal, which was filed by the Eighth Judicial District Attorney’s Office (“District Attorney’s Office”) pursuant to sections 20-1-107(2) and 16-12-102(2), C.R.S. (2024), challenges a decision by the district court disqualifying the entire District Attorney’s Office from prosecuting the pending case below against Toby Joseph Chapman. We conclude that the court erred in granting Chapman’s “Motion for Appointment of Special Prosecutor” pursuant to section 20-1-107(2), C.R.S. (2024), and therefore reverse the court’s ruling.

I. Facts and Procedural History

¶2 Chapman is charged, among other things, with multiple counts of violating a protection order and stalking based on his alleged contacts and attempted contacts with a district court judge in the Eighth Judicial District. Chapman filed a motion for appointment of a special prosecutor, citing potential conflicts of interest involving a Chief Deputy District Attorney for the Eighth Judicial District, Brian Hardouin, and the judge. In support of his motion, Chapman highlighted Hardouin’s frequent appearances before the judge, his leadership role in the District Attorney’s Office, the fact that the Eighth Judicial District Court bench had recused itself from the case, and the proximity of the District Attorney’s Office to the judge’s chambers. The prosecution countered that none of the circumstances

that Chapman identified constitute the type of special circumstances that would warrant disqualification under section 20-1-107(2).

¶3 At the hearing on the motion, Chapman additionally contended that there was an “appearance of impropriety” because future rulings in the judge’s courtroom could be affected if Hardouin “garnered favor” with the judge by obtaining a favorable outcome in this case. Hardouin responded that “appearance of impropriety” is no longer in the disqualification statute and is not a reason to remove a district attorney’s office from a case.

¶4 The senior judge assigned to the case initially denied the motion, but two days later changed course, holding that “best practice dictates, and the law requires, an appointment of a special prosecutor when a judge is an alleged victim and the prosecutor, its superior[,] and its underlings appear in front of the judge.” “[S]pecial circumstances exist,” the court continued, “which render it unlikely that [Mr. Chapman] [would] receive a fair trial if the case is prosecuted by” the District Attorney’s Office.

II. Analysis

¶5 We begin by setting out the relevant standard of review and then turn to the statute governing disqualification motions of the type at issue here.

A. Standard of Review

¶6 District courts have broad discretion to determine whether to disqualify a district attorney's office from prosecuting a case. *People v. Arellano*, 2020 CO 84, ¶ 21, 476 P.3d 364, 368; *People v. Epps*, 2017 CO 112, ¶ 14, 406 P.3d 860, 864. We review a district court's decision to disqualify a district attorney's office under an abuse of discretion standard. *People v. Loper*, 241 P.3d 543, 546 (Colo. 2010). Consequently, we will not disturb a court's decision on a motion to disqualify unless the court's decision was manifestly arbitrary, unreasonable, or unfair. *People v. Kendrick*, 2017 CO 82, ¶ 36, 396 P.3d 1124, 1130. "[A] misapplication of the law necessarily constitutes an abuse of discretion." *Id.*

B. Disqualification Under Section 20-1-107(2)

¶7 Disqualification of a district attorney from a case is governed by section 20-1-107(2), which provides that "[t]he motion [to disqualify] shall not be granted unless requested by the district attorney or unless the court finds that the district attorney has a personal or financial interest or special circumstances exist that would render it unlikely that the defendant would receive a fair trial." *Id.* "These are the exclusive bases for disqualifying a district attorney." *People v. Solis*, 2022 CO 53, ¶ 24, 523 P.3d 427, 432.

¶8 The party moving to disqualify the district attorney based on "special circumstances" bears the burden of showing that, absent disqualification, they will

not receive a fair trial. *Loper*, 241 P.3d at 546. “Whether it is likely that a defendant will receive a fair trial is the most important factor governing a court’s decision to disqualify a district attorney” under the special circumstances provision of the statute. *Arellano*, ¶ 24, 476 P.3d at 368. “To meet this burden, the moving party must point to ‘actual facts and evidence in the record supporting the contention.’” *People v. Kent*, 2020 CO 85, ¶ 19, 476 P.3d 762, 766 (quoting *Loper*, 241 P.3d at 546).

¶9 On appeal, the District Attorney’s Office argues that the district court erred as a matter of law in granting Chapman’s motion. We agree.

¶10 The district court based its decision on the routine performance of duties by Hardouin and the District Attorney’s Office before the victim’s court. The fact that Hardouin and other prosecutors in the District Attorney’s Office appear in front of the judge who is the alleged victim does not constitute special circumstances of the type contemplated by section 20-1-107(2). More specifically, this working relationship does not rise to the level of the “extreme” special circumstances needed to trigger the disqualification statute. See *Arellano*, ¶ 25, 476 P.3d at 368 (“[T]he special circumstances must be ‘extreme,’ and a mere appearance of impropriety is insufficient.” (quoting *Loper*, 241 P.3d at 546)).

¶11 The proximity of the District Attorney’s Office to the judge’s chambers is also not a reason to grant the motion, nor is the number of investigators and staff from the District Attorney’s Office on the prosecution’s witness list. These

individuals, as the prosecution explains, are routinely disclosed as witnesses in cases and few are likely to be called to testify given that the Loveland Police Department, not the District Attorney's Office, investigated the charges in this case.

¶12 Finally, because the rules governing judicial recusal are far broader than the "special circumstances" contemplated by section 20-1-107(2), the recusal of the Eighth Judicial District Court bench is also not a reason to grant the motion. For example, the Colorado Code of Judicial Conduct, C.J.C. 2.11(A), describes how a judge "*shall* disqualify himself or herself in *any* proceeding in which the judge's impartiality *might* reasonably be questioned." (Emphases added.) Section 16-6-201(1)(d), C.R.S. (2024), further dictates that a judge shall be disqualified to hear a case if they are "in any way interested or prejudiced with respect to the case, the parties, or counsel." Because "[t]he principle of impartiality, disinterestedness, and fairness on the part of the judge" is basic to our system of justice, even the *appearance* of bias or partiality can harm public confidence in the administration of justice and therefore requires judicial recusal. *Johnson v. Dist. Ct.*, 674 P.2d 952, 956 (Colo. 1984) (quoting *People v. Dist. Ct.*, 560 P.2d 828, 831 (Colo. 1977)). Thus, while the recusal of the Eighth Judicial District Court bench was wholly appropriate here, it has no bearing on Chapman's claim with respect to the District Attorney's Office.

¶13 Considering Chapman's failure to present evidence of special circumstances that would justify disqualification, we conclude the district court erred in disqualifying the District Attorney's Office.

III. Conclusion

¶14 For these reasons, we reverse the district court's order disqualifying the District Attorney's Office.