COURT, WELD COUNTY, COLORADO 901 9th Ave, Greeley, CO 80631	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. CRAIG D. BUCKLEY, Defendant.	▲ **COURT USE ONLY** ▲
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CHIEF JUDGE HARTMANN'S MOTION TO QUASH SUBPOENA

The Honorable James F. Hartmann, in his official capacity as Chief Judge of the 19th Judicial District, by and through undersigned counsel, respectfully moves to quash the subpoena to appear and produce documents in the above-captioned case on September 19-20, 2012. As grounds for this motion, Judge Hartmann states as follows.

BACKGROUND

1. Chief Judge Hartmann presided over a civil action brought by Mr. Buckley against his former employers, captioned *Buckley v. Dream Stone, Inc.*, 09CV0991.

2. Chief Judge Hartmann dismissed *Buckley v. Dream Stone* after Mr. Buckley failed to appear for his deposition on two separate occasions.

3. The alleged victims in the above-captioned case are or were owners of Dream Stone, Inc.

4. This is the second time that Mr. Buckley has attempted to subpoena Chief Judge Hartmann to testify at his trial. The first occurred in advance of Mr. Buckley's first

trial date in October 2011. Judge Hartmann moved to quash that subpoena as well, and on October 13, 2011, this Court granted the motion.

5. For the reasons outlined below, the Court should quash the subpoena and release Judge Hartmann from appearing at Mr. Buckley's trial or providing any of the above-described documents.

ARGUMENT

I. Judicial Officers May Not Be Called to Testify to Matters Observed in their Judicial Function Unless Extraordinary Circumstances Exist; No Such Circumstances Exist.

6. When a judge is called to testify, the reason for his testimony must be highly scrutinized. *See United States v. Dowdy*, 440 F. Supp. 894, 896 (W.D.Va. 1997). In Colorado there is no absolute bar to a judicial officer's testimony, but there is a strong public policy prohibiting judges from being called as witnesses. The practice of calling judicial officers to testify should be sparingly used and "only when the proponent of the evidence shows that the judge's testimony is not only relevant but also *necessary* to prove a material element." *People v. Drake*, 841 P.2d 364, 368 (Colo. App. 1992) (*e.g.*, trial judge's testimony regarding defendant's attitude and demeanor was irrelevant and unnecessary to prove a material element of perjury charge); *see e.g., People v. Williamson,* 839 P.2d 519 (Colo. App. 1992).

7. "A judge's testimony is not admissible to prove or contradict a judgment because the record is the best evidence of the judgment." *Id.*; *People v. Tippett*, 733 P.2d 1183, 1194 (Colo. 1987). In fact, if there is any other source of the information sought to be elicited from the judge, that alternate source must be used. *See People v. Kriho*, 996 P.2d 158, 176 (Colo. App. 1999) (no error for refusing to allow judge's testimony because evidence could have been elicited from court record); *People v. Drake*, 841 P.2d 364, 368 (Colo. App. 1992) (finding judge's testimony to identify issues raised and decided in another trial not necessary because prosecutor could have proven the same facts with other evidence);

8. Unless extraordinary circumstances exist, such as an irregularity with a court record, a judicial officer cannot be called to testify to matters observed in his judicial function. *See Tippett*, 733 P.2d at1194 (Colo. 1987) (judgment cannot be proved by parol evidence of judge's testimony because record is best evidence; however judge's testimony is admissible where record is ambiguous); *see e.g., See Hensley v. Alcon Labs., Inc.*, 197 F. Supp. 2d 548, 550 (S.D.W.Va. 2002) ("[a]bsent a showing of extraordinary need, a judge may not be compelled to testify about matters observed as the consequence of the

performance of his official duties."); *United States v. Zipkin*, 729 F.2d 384, 389 (6th Cir. 1984); *Blue Mountain Iron & Steel Co. v. Portner*, 131 F. 57, 60 (C.C.A.4 1904), *cert. denied,* 195 U.S. 636 (1904); *Hardeman v. State,* 252 S.W. 503, 504 (1923).

9. Likewise, absent extraordinary circumstances, judges are precluded from testifying as to their mental processes for judicial decisions. *See United States v. Morgan*, 313 U.S. 409, 422 (1941); *Robinson v. Comm'r of Internal Revenue*, 70 F.3d 34, 38 (5th Cir. 1995) (finding that "a judge may not be asked to testify about his mental processes in reaching a judicial opinion"); *In re Thompson*, 77 B.R. 113, 114 (Bankr. N.D. Ohio 1987) (requiring "extraordinary circumstances" for a judge to be examined concerning actions taken in her judicial capacity); *cf. Tippett*, 733 P.2d at 1191 (noting that public policy prohibits judges from testifying about grounds for decisions in former cases); *Drake*, 841 P.2d at 367 ("[p]ublic policy and convenience prohibit judges from being called as witnesses to state the grounds upon which they decided former cases).

10. An integral part of our justice system is that "a judge should uphold the integrity and independence of the judiciary." *See* Colo. Code of Jud. Conduct, Canon 1. "The role of the judiciary, if its integrity is to be maintained, is one of impartiality." *People v. Martinez,* 523 P.2d 120, 121 (Colo. 1974). These principals are the backbone of the authority prohibiting judicial testimony to matters which can be established through other sources. Indeed, judicial officers' testimony should not be permitted for matters which can be established through other sources because a judicial officer's testimony may be more compelling to a jury than a transcript or written order. That is one reason judges should very rarely be put in the position to testify: the prestige of a judge's office carries to his testimony. *See, e.g.,* Colo. Code of Jud. Cond., Canon 2, Commentary ("The testimony of a judge as a character witness injects the prestige of the judge's office into the proceeding in which the judge testifies.") Even when a judge is not questioned regarding the character of a party or witness, a jury would still likely give more weight to the judge's testimony than it would to other evidence due to the prestige of the Judge's office. The prestige of a judge's office should not be used to advance the interests of any party to a case. *Id.*

11. Unlike Mr. Buckley previous subpoena, this time he has not requested documents. However, based on his prior subpoena, it appears likely that Mr. Buckley will seek testimony from Chief Judge Hartmann regarding "evidence of fraud upon the Court by alleged victims," and "all evidence of harassment/provocation of Defendant by alleged victims" as recorded in District Court case no. 09CV0991. As *Tippett, supra,* holds, Chief Judge Hartmann may not be compelled to testify about information in the record in that case. Moreover, the record in case no. 09CV0991 is clearly available to Mr. Buckley. Not only is the record public, but as a party to that case Mr. Buckley clearly had access to it.

12. Furthermore, to the extent that Mr. Buckley no longer has documents or transcripts filed in case no. 09CV0991, Chief Justice Directives 06-01 and 08-02 govern his access to those materials. Specifically, CJD 08-02 provides that "[t]he public can obtain electronic access to certain court records through the internet." Likewise, CJD 06-02 outlines the procedures and costs for case file retrieval, document research, and copying. Aside from the contents of the record of case no. 09CV0991, Judge Hartmann has no documents or other materials that are responsive to the subpoena.

II. The subpoena was not timely served.

13. Crim. P. 17 outlines the procedure and authority for the issuance of subpoenas in criminal cases.

14. Crim. P. 17 does not explicitly outline the required time of service. Crim. P. 57(b), however, provides that "[i]f no procedure is specifically prescribed by rule, the court...shall look to the Rules of Civil Procedure and to the applicable law if no Rule of Criminal Procedure exists.

15. Common sense dictates that a subpoena issued pursuant to Crim. P. 17 must be served upon the subpoenaed party a reasonable time prior to that party's appearance. In the civil context, C.R.C.P. 45(c) states that "[u]nless otherwise ordered by the court for good cause shown, such subpoena shall be served on later than forty-eight (48) hours before the time for the appearance set out in said subpoena."

16. In the absence of a timing requirement in Crim. P. 17, this Court should apply the 48-hour requirement in C.R.C.P. 45(c).

17. The Clerk's office accepted service on Judge Hartmann's behalf at approximately 1:30 p.m. on September 17, 2012, less than 48 hours before the demanded appearance.

18. Because this does not constitute adequate notice, the subpoena should be quashed.

CONCLUSION

19. Defendant has failed to meet any of the required tests to require Chief Judge Hartmann to testify at his trial. This Court should therefore quash the subpoena served upon him on September 17, 2012.

20. Contemporaneously with this motion, undersigned counsel is filing a motion to appear by telephone to argue it, should the Court deem argument necessary.

Respectfully submitted this 17th day of September, 2012.

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Public Officials Unit
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within MOTION TO QUASH upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 17th day of September 2012 addressed as follows:

Craig Buckley
[redacted]
Longmont, CO 80501

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