

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 15-cv-02218-WJM-KLM

KENNETH R. ZARTNER,

Plaintiff,

v.

CITY AND COUNTY OF DENVER, COLORADO,
SHAWN L. MILLER,
DAVID PACHECO,
ROBERT MAZOTTI,
MARIO GALLARDO,
CRAIG PENSON,
JEFFREY STEED,
RICHARD GILSTRAP,
APRIL KULHANEK, R.N.,

Defendants.

ORDER OF RECUSAL

This matter comes before the Court on Defendant April Kulhanek's Unopposed Motion for Order of Recusal (ECF No. 42). The Court having reviewed the Motion and being fully advised hereby ORDERS as follows:

The Defendant Kulhanek's Unopposed Motion is GRANTED.

Section 455(a) of Title 28 of the United States Code states that "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." A United States judge must recuse himself when there is an appearance of bias, regardless of whether there is actual bias. *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995). The test is

whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality. *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987).

The Amended Complaint makes allegations regarding violations of the Plaintiff's constitutional rights by the Defendants, including April Kulhanke, R.N. Although not disclosed in either the Complaint or in the Amended Complaint, according to the Motion Nurse Kulhanek is employed by Denver Health. My wife, Judith C. Shlay, M.D., is employed by Denver Health in a senior management position. On these facts, I find that a reasonable person would harbor doubts about my impartiality. As a result, recusal is required by 28 U.S.C. § 455(a), and I hereby recuse myself from this case. It is therefore

ORDERED that the Judge's file be returned to the Clerk's office for the case to be reassigned by random draw.

Dated this 8th day of March, 2016.

BY THE COURT:



William J. Martínez
United States District Judge