

Fort Collins Municipal Court 214 N. Mason Fort Collins, Colorado 80521 (970)221-6800	<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JUL 10 2017 <i>RLD</i></p> <p style="text-align: center;">FORT COLLINS MUNICIPAL COURT</p> <p style="text-align: center;">Court Use Only</p>
Plaintiff: Colleen Hoffman, et al., v. Defendants: City Council of the City of Fort Collins, et al.	
	Case No.: 2017CIVIL01
ORDER RE: DISQUALIFICATION	

The Court, having reviewed the parties' submissions, applicable rules of procedure and case law, hereby FINDS and ORDERS as follows:

1. The Plaintiffs filed a motion for disqualification pursuant to C.R.C.P. 97 and expansion of time for filing opening brief. Plaintiffs allege two bases for disqualification: this Court's prior employment as an assistant city attorney for the City of Fort Collins and the Court's current employment status as an appointee of one of the Defendants (City Council of the City of Fort Collins) in this action. The motion was not accompanied by affidavit as required by Rule 97.

2. A trial judge has the duty to preside over matters before her so long as there is no valid reason for disqualification. *Brd of Cnty Com'rs v. Blanning*, 479 P.2d 404 (Colo. App. 1970). This Court's prior employment with the City Attorney's Office, without further showing that such employment was somehow related to or involved the subject matter of the litigation at hand, is not sufficient to require disqualification under Rule 97. *Id.*

3. A trial judge also has the duty to ensure a fair and impartial hearing for litigants. In addition, "[c]ourts must meticulously avoid any appearance of partiality, not merely to secure the confidence of the litigants immediately involved, but to retain public respect and secure willing and ready obedience to their judgments." *Wood Bros. Homes v. City of Fort Collins*, 670 P.2d 9 (Colo. App. 1983). *See also* Colo. CJC Canon 1 ("A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.").

4. Though the Plaintiffs did not file an affidavit in support of their motion for disqualification, a court is nevertheless empowered to disqualify himself or herself even though procedural rules, such as the filing of an affidavit with a motion for disqualification, have not been

properly followed. *People ex rel. A.E.L.*, 181 P3d 1186 (Colo. App. 2008). A court may recuse or disqualify herself "in a proceeding in which a judge's impartiality may be reasonably questioned." *Id.*

5. This Court is impartial and harbors no actual bias for or against any of the parties to this litigation. However, I find that due to the *appearance* of partiality occasioned by the fact that one of the Defendants in this litigation is this Court's employer, disqualification is appropriate.

6. It is hereby ORDERED that this matter is referred to Judge Lane for assignment of a temporary judge pursuant to Resolution 2017-34.

Dated this 10th day of July, 2017.

BY THE COURT



By: _____
Teresa Ablao, Assistant Municipal Judge

CERTIFICATE OF SERVICE

I certify that on July 10, 2017, I served the above and forgoing ORDER
Re: **Disqualification** to the following persons via electronic mail as follows:

Plaintiffs:

Collen Hoffman
cohoff@comcast.net

Rick Hoffman
Rick-hoffman@comcast.net

Ann Hunt
ARH4@comcast.net

Intervenors:

Martha Fitzgerald
mfitzgerald@bhfs.com

Carolynne C. White
cwhite@bhfs.com

Gina L. Tincher
gtincher@bhfs.com

Defendants:

Kimberly B. Schutt
kschutt@wicklaw.com

John R. Duval
jduval@fcgov.com



Clerk of the Court

RESOLUTION 2017-034
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITIES OF FORT COLLINS, LOVELAND AND GREELEY FOR THE
EXCHANGE OF JUDICIAL SERVICES, AND APPOINTING TEMPORARY JUDGES

WHEREAS, on occasion, Municipal Judges may be prevented from sitting on the bench by reason of personal conflict of interest, illness, vacation, or other reasons, and the Assistant Municipal Judge presiding over and conducting the Municipal Court in such event may also be unavailable; and

WHEREAS, in order to provide cost-effective special judicial services to temporarily replace the services of its Municipal Judge in the event of a conflict of interest or other circumstance, the City should cooperatively exchange the services of the City's Municipal Judge with those of other entities; and

WHEREAS, Article VII, Section 1 of the City Charter sets forth the requirements for the appointment of the Municipal Judge and temporary judge, including that the temporary judge be a reputable and qualified attorney; and

WHEREAS, the City Council has the authority to designate reputable and qualified attorneys to serve as temporary judges through calendar year 2018; and

WHEREAS, the City Council recognizes that the Loveland Municipal Judge, the Honorable Geri Joneson, and the Greeley Municipal Judge, the Honorable Brandi Nieto, are reputable and qualified attorneys; and

WHEREAS, City staff has discussed with Loveland and Greeley's representatives the proposed terms of an intergovernmental agreement providing for the exchange of judicial services if needed to temporarily substitute when a Municipal Judge and temporary or assistant judges are unavailable, including the provision of replacement judicial services and compensation for costs directly incurred to provide such services; and

WHEREAS, pursuant to Colorado Revised Statutes Section 29-1-203, governments may cooperate or contract with one another to provide any function or service lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the City Council has determined that it is in the best interests of the City that the Mayor be authorized to execute an intergovernmental agreement between the City, Greeley and Loveland in support thereof; and

WHEREAS, the proposed intergovernmental agreement would replace and supersede an existing agreement between the same parties dated January 18, 1994.

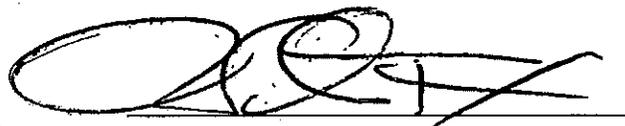
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That City Council hereby authorizes the Mayor to execute an intergovernmental agreement between the City, the City of Loveland and the City of Greeley, consistent with this Resolution, for the purpose of appointing Judge Geri Joneson and Judge Brandi Nieto as the temporary judges for Fort Collins, with such language as the City Manager, in consultation with the City Attorney, determines necessary and appropriate to protect the interests of the City or further the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, A.D. 2017.




Mayor

ATTEST:


City Clerk