

FORT COLLINS MUNICIPAL COURT 215 N. Mason Fort Collins, CO 80521 Phone (970) 221 6800	
Plaintiffs: Eric Sutherland, J & M Distributing, DBA Fort Collins Muffler and Automotive v. Defendant : THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry. Indispensable party: Craig Russell, Applicant	▲ COURT USE ONLY ▲ Case Number: 2018civil01
<hr/> Parties without attorney Eric Sutherland 3520 Golden Currant Fort Collins, CO 80521 (970) 224 4509 sutherix@yahoo.om J & M Distributing, DBA Fort Collins Muffler and Automotive Brian Dwyer, President 2001 S. College Ave. Fort Collins, CO 80525 (970) 484 0866 bdwyer1199@gmail.com	
Motion for Disqualification of Judge Pursuant to Rule 97 C.R.C.P. and Motion for Expansion of Time for Filing Amended Response to Defendant's Motion To Dismiss.	

Pursuant to C.R.C.P. Rule 97, Plaintiffs, Eric Sutherland and J & M Distributing, request disqualification of David Ayraud as judge in this case and expansion of time for filing an amendment to our Response to the Defendant's Motion to Dismiss.

Simultaneously, we are filing an Amended Complaint and a Response to the Motion to Dismiss filed by the Defendant on April 25th.

As *pro se* litigants in this matter, the Plaintiffs herein use the plural pronouns (we, us, our) to refer to themselves. Unless otherwise noted, all references to the

Plaintiffs in this pleading where a statement of position on any matter is made or inferred indicate a jointly adopted position agreed to by both individual plaintiffs.

Certification of conference pursuant to Rule 121 section 1-15

Conference with Counsel for the Defendants regarding the Rule 97 Motion was initiated by email on April 30th. The Defendants, through their attorney, responded by email on April 30th and stated: “ *the City will not necessarily oppose the motion if a proper showing is made for disqualification under Rule 97.*”

Conference with Counsel regarding the Expansion of Time to file a Response to the Motion to Dismiss to was initiated by email on May 14, 2018. Counsel for the Defendants has stated that this request for a 5 day expansion of time to begin on

INTRODUCTION

On March 6th, 2018, City Council of City of Fort Collins passed Resolution 2018-022 Appointing David Ayraud as Temporary Judge and Authorizing the Execution of an Employment Agreement.

Also on March 6th, 2018, City Council of City of Fort Collins passed Resolution 2018-021 Appointing Lisa D. Hamilton-Fieldman as Temporary Judge and Authorizing the Execution of an Employment Agreement.

This case was filed and served by the Plaintiffs on April 3, 2018.

On April 25, 2018, the Defendants filed a Motion to Dismiss.

Also on April 25, 2018, Chief Judge of the Municipal Court, Kathleen Lane, issued an order in this case appointing David Ayraud to preside over this matter.

DISQUALIFICATION IS REQUIRED PURSUANT TO RULE 97

C.R.C.P. Rule 97 states: A judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein.

David Ayraud is currently employed as Senior Attorney in the Office of the Larimer County Attorney. The Office of the Larimer County Attorney is

responsible for the legal defense of all actions brought against Larimer County and its elected officers.

At the present time, Plaintiff Eric Sutherland has commenced a civil action in the 8th District Court, 2018CV149, which names the Larimer County Assessor, Steve Miller, and the Larimer County Treasurer, Irene Josey, as defendants. This same lawsuit also names the City of Fort Collins as a defendant.

Without question, a person who is employed to represent defendants in a separate lawsuit in which a party to this lawsuit is the plaintiff is so related or so connected to the Plaintiff, Eric Sutherland, as to render it improper for him to sit on this proceeding. The additional matter of fact that the Defendants in this lawsuit are essentially the same as the Defendant in 2018CV149, although named differently as a consequence of the different venues for each suit, further reinforces the relationship and connection.

Furthermore, Plaintiff Eric Sutherland, intends to broaden the scope of the claims in 2018CV149 or file a separate lawsuit alleging violation of laws by Larimer County officials in association with levying an unlawful abatements and refund tax, unlawfully placing ‘delinquencies’ of the Boxelder Stormwater Authority on property tax notices and failing to comply with the requirements of the Urban Renewal Authority and Downtown Development Authority statutes.

Furthermore, Plaintiff Eric Sutherland, intends to submit requests for public records to Larimer County and, at the time of authoring this Motion, does have an open public records request submitted to Larimer County. In nearly all previous submissions of public records requests, David Ayraud, has served as the custodian of records or as a representative for the custodian of records sought.

STATEMENT OF APPRECIATION

We would like to state here our sincere appreciation for the Mr. Ayraud's willingness to serve the Fort Collins Municipal Court as a judge. Undoubtedly, Mr. Ayraud would bring much welcomed experience and perspective to this role.

The appreciation is sharpened by the regrettable series of events that have characterized temporary judges occupying the bench of this court. This series of events includes the improper exercise of judicial authority by two previous judges who were never properly appointed to serve on the municipal bench as required by the City Charter of the City of Fort Collins. Against this backdrop, having a person who is undoubtedly qualified to preside over the Municipal Court and, amazingly, is actually duly appointed to the position does evidence remarkable progress in the administration of the court. We certainly do not wish for this fact to be unrecognized. However, as discussed above, it is proper at this point to recognize that the standards that should be expected of the Municipal Court will be compromised should a person that is defending lawsuits and tending to affairs of a legal nature that a party to this action is involved in would be compromised in the event that this Motion for Disqualification is not granted.

EXPANSION OF TIME TO AMEND RESPONSE TO MOTION TO DISMISS IS PROPER

An initial Response to Defendant's Motion to Dismiss is timely filed with this combined Motion. Also, an Amended Complain and Motion for Leave to file the Amended Complaint are also filed with this combined Motion.

Because the jurisdictional issue regarding the naming of an additional party to this suit is likely to be the subject of further discussions between the parties¹, the

¹ The Defendants have moved for dismissal for failure to name an indispensable party, but have not identified who that part is despite numerous inquiries by the Plaintiffs seeking information as to that identity. There is no guaranty that the person named in the caption of this pleading as an Indispensable party will be satisfactory to Defendants.

approach of timely filing a Response with the intent to amend it later is prudent. No party will be prejudiced by this approach. Indeed, Counsel for Defendants has indicated that it does not support this expansion of time. Furthermore, the disposition of this court as to the Rule 97 motion is a factor in how this case may proceed at this time.

WHEREFOR, we respectfully request that this court find that David Ayraud is disqualified from presiding over this matter.

We further request that all proceedings in this matter, including resolution of the Motion to Dismiss filed by the Defendants, be suspended until a ruling on this Motion is made, with the exception that an amendment (singular) to the Response to the Motion to Dismiss may be filed with this court during the pendency of resolution of this Motion.

We further respectfully request an expansion of time for filing an amendment to the Plaintiff's Response to the Motion to Dismiss be granted such that such Amended Response may be timely filed within 5 days of resumption of proceedings in this case regardless of the decision of this court on other requests for relief made here.

Respectfully submitted this 17th day of May, 2018.

Eric Sutherland

Eric Sutherland

Brian Dwyer

Brian Dwyer

Address of Lead Plaintiff

3520 Golden Currant

Fort Collins, CO 80521