

<p>Fort Collins Municipal Court, Larimer County, Colorado</p> <p>Court Address: 215 N. Mason St., 1st floor P.O. Box 580 Fort Collins, CO 80522</p> <p>Court Phone: 970-221-6800</p> <hr/> <p>PLAINTIFFS: Eric Sutherland; J&M Distributing, DBA Fort Collins Muffler and Automotive</p> <p>v.</p> <p>DEFENDANTS: 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</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Civil Case No.: 2018-CIVIL01</p>
<p>ORDER ON RECUSAL</p>	

This matter comes before the Court upon motion of the Plaintiffs pursuant to C.R.C.P. 97. The Court having reviewed the pleadings filed, the motion in support and response filed by Defendants FINDS AND ORDERS as follows:

The Court agrees that procedural matters may be resolved while a disqualification motion is pending, but given the current posture of this case, any ruling on acceptance of the response to motion to dismiss or leave to file such response would have an impact on the Plaintiff's substantive rights as it may make the ultimate granting or denial of the motion to dismiss more or less likely. Accordingly, the Court will not address the procedural issues at this time.

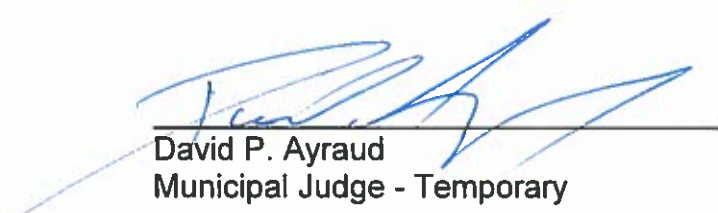
It is necessary to review the current C.R.C.P. 97 motion in the context of the unique circumstances of the municipal court and other pending litigation in district court. The legal authority cited by both Plaintiffs and Defendants, while correct, does not address the unique circumstances in this situation. The Court can conclude it has no bias or prejudice towards any of the parties or a personal interest in the outcome of the proceedings. Therefore, if the sole purpose of C.R.C.P. 97

was to ensure the parties were not required to litigate before a judge with a "bent of mind" then this matter would easily be resolved. However, C.R.C.P. 97 also requires the Court to ensure there is no harm to public confidence in the administration of justice. In short, that there is no "appearance of impropriety" even if none actually exists. *People v. District Court*, 560 P.2d 828 (Colo. 1977); see also *Johnson v. Dist. Court In & For Jefferson Cty.*, 674 P.2d 952 (Colo. 1984).

In that light the Court must look at the fact that this judge is a part-time/temporary municipal judge. As the Defendants point out, a past dealing or even past representation of or against a party would not disqualify a judge. This is the case with most full-time judicial officers who previously served as litigators. However, in this circumstance it appears one of the Plaintiffs has filed a civil claim in Larimer County District Court, naming various Larimer County elected officials as Defendants. It is correct that this judge also functions as a Larimer County Attorney and represents the elected officials named in the pending District Court action. While the two cases are unrelated and have no common issues, it is a highly unusual and very unlikely circumstance to have a judge represent an adverse party in a case against the Plaintiff, while simultaneously presiding over another case involving the Plaintiff. Even if the judge were to have the utmost neutrality, good intentions and ability to remain impartial, the inescapable public perception would see an attorney advocating against a party in one proceeding and then presiding over a dispute of the same party in another proceeding. The protection of the integrity of the judicial system cannot tolerate such a perception.

Therefore, while there is no actual prejudice or bias, the Court must protect the public's confidence in the judicial system and agrees recusal is appropriate under these circumstances. The Plaintiffs' C.R.C.P. 97 Motion is GRANTED. This Chief Judge is to reassign this matter.

Ordered this 22nd day of May, 2018



David P. Ayraud
Municipal Judge - Temporary