



<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100</p>	<p>COURT USE ONLY</p>
<p><b>Plaintiff: STACY LYNNE</b></p> <p>v.</p> <p><b>Defendants: NOAH BEALS, Senior Planner, City of Fort Collins, in his individual and official capacity, and JEREMY CALL, Senior Associates – Logan Simpson Design, Contractor for the City of Fort Collins, in his individual and official capacity</b></p>	
<p>Kimberly B. Schutt, #25947 WICK &amp; TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: <a href="mailto:kschutt@wicklaw.com">kschutt@wicklaw.com</a></p>	<p>Case Number: 2018 CV 220</p> <p>Courtroom: 3C</p>
<p style="text-align: center;"><b>DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S CASE STATUS REGARDING SERVICE</b></p>	

**COMES NOW**, the Defendant, Noah Beals, by and through his counsel, Wick & Trautwein, LLC, and respectfully submits the following response to Plaintiff's "Case Status Regarding Service," for purposes of clarifying certain misrepresentations made by the Plaintiff. In support hereof, Defendant Beals states as follows:

1. On January 14, 2019, the Plaintiff filed a "Case Status Regarding Service," for purposes of responding to the Court's order regarding service of process on Logan Simpson Design. Plaintiff's status report correctly identifies defendant Jeremy Call as an employee of Logan Simpson Design, an independent contractor which has provided consulting services for the City of Fort Collins.

2. On page 2 of Plaintiff's status report, she goes on to refer to alleged representations made by Carrie Daggett, the City Attorney for Fort Collins, in another lawsuit filed by the Plaintiff against the City of Fort Collins in Larimer County District Court Case No. 2018 CV 172. Specifically, Plaintiff states Ms. Daggett represented in that action that "Mr. Call was covered under the umbrella of the city attorney's office." Plaintiff states that she thus relied upon those alleged representations in naming both Jeremy Call and Noah Beals as defendants in

their individual and official capacities in this suit, and suggests she expected Mr. Call would be represented by the City's attorney in this case.

3. However, Plaintiff has misstated, and perhaps misunderstands, the position previously taken by the City in Larimer County District Court Case No. 2018 CV 172. For purposes of clarification and for the record here, that suit was brought by the Plaintiff against the City under the Colorado Open Records Act ("CORA"), challenging the City's withholding of certain records from the Plaintiff's CORA request on the grounds that they were protected attorney-client privileged communications. Those communications related to the City's development of certain revisions to the municipal sign code, and Plaintiff subpoenaed Mr. Call to testify at the hearing in that matter.

4. The City's position at the hearing was that, to the extent Mr. Call – in his capacity as a consultant for Logan Simpson Design – participated in discussions with City staff and outside legal counsel for purposes of developing revisions to the City's sign code, the attorney-client privilege extended to those communications, pursuant to *Alliance Const. Solutions, Inc. v. Dept. of Corrections*, 54 P.3d 861 (Colo. 2002)(communications between attorney and client's independent contractor were protected by attorney-client privilege, where contractor had significant relationship to matters discussed with counsel and had input that was necessary to gain and provide legal assistance to client). Following that hearing, Judge Blanco entered an order dated October 11, 2018, in which she applied the *Alliance* test to conclude that such communications involving the City's outside counsel and Mr. Call were indeed subject to the attorney-client privilege, such that they were properly withheld by the City in response to Plaintiff's CORA request. A copy of that order is attached hereto as *Exhibit 1*, for the Court's information and for the record in this case.

5. Therefore, Plaintiff has misstated and apparently misunderstands the position of the City in that other suit. The issue of whether Mr. Call's communications with the City's outside legal counsel and City staff were subject to the attorney-client privilege is very different from the issue of whether the City has an obligation to indemnify and defend Mr. Call in this lawsuit. To the extent the Plaintiff has suggested the City Attorney made any representations regarding the latter issue, she is incorrect.

6. Plaintiff has further indicated that she will take appropriate steps to correct the manner in which the defendants are listed in both their individual and official capacities, if the Court directs her to do so. However, for the reasons stated in Mr. Beal's pending motion to dismiss, this Court lacks subject matter jurisdiction over the claims against him pursuant to the pertinent provisions of the Colorado Governmental Immunity Act. Mr. Call has likewise filed a motion to dismiss the claims against him. Dismissal of the Complaint against the defendants would thus render moot any issue of their listing in the caption.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of January, 2019.

WICK & TRAUTWEIN, LLC

By: s/ Kimberly B. Schutt  
Kimberly B. Schutt, #25947  
Attorneys for Defendant Beals

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S CASE STATUS REGARDING SERVICE** was filed via the Colorado Courts E-Filing System and served this 24<sup>th</sup> day of January, 2019, on the following:

Stacy Lynne  
305 W. Magnolia Street #282  
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at stacy\_lynne@comcast.net

Theresa Corrada  
BENEZRA & CULVER, P.C.  
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s/ Jody L. Minch

*[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC]*