

FEB 22 2019

FILED IN COMBINED COURTS
LARIMER COUNTY COLORADO



<p>DISTRICT COURT Larimer County, Colorado 201 LaPorte Avenue Fort Collins, Colorado 80521</p>	<p>2019 FEB 19 PM 3:42</p> <p>▲ COURT USE ONLY ▲</p>
<p>PLAINTIFF: Stacy Lynne</p> <p>v.</p> <p>DEFENDANTS:</p> <p>Noah Beals, Senior Planner, City of Fort Collins: in his individual and official capacity</p> <p>Jeremy Call, Senior Associate – Logan Simpson Design, Contractor for the City of Fort Collins: in his individual and official capacity</p>	<p>Case Number: 2018 CV 220</p> <p>Division: Courtroom: 3C Jouard</p>
<p>PLAINTIFF'S REPLY TO DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S CASE STATUS REGARDING SERVICE</p>	

Plaintiff Stacy Lynne files this REPLY TO DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S CASE STATUS REGARDING SERVICE for the following purposes:

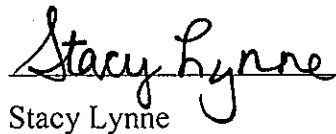
1. To provide the Court with a fully transparent record about an issue in a collateral case (see EXHIBIT 1 attached) that is relevant to Defendant Beals' response regarding case status service; and,

2. Because Defendant Beals included the ORDER from case 2018 CV 172 (*Lynne v. City of Fort Collins et al*) in his response to Plaintiff's Case Status Service; and finally,
3. Plaintiff realized that in the interest of fairness to the Court and both parties – because Defendant Beals included the ORDER from 2018 CV 172 in his RESPONSE in 2018 CV 220 – this Court deserves to be aware of the totality of these potentially inseparable issues that could impact both cases.

Attachment:

EXHIBIT 1: *Lynne v. City of Fort Collins et al*, 2018 CV 172; PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER PER COLORADO RULES OF CIVIL PROCEDURE (C.R.C.P. 60 (b)(2): FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY

Respectfully filed on Tuesday, February 19, 2019.


Stacy Lynne

CERTIFICATE OF SERVICE

I certify that on Tuesday, February 19, 2019, a true and accurate copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S CASE STATUS REGARDING SERVICE** was filed with the clerk and served via USPS to:

Theresa Corrada
Benezra & Culver, P.C.
633 17th Street, Suite 1450
Denver, Colorado 80202

Kimberly Schutt
Wick & Trautwein, LLC
PO Box 2166
Fort Collins, Colorado 80522

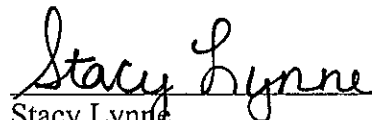

Stacy Lynne

Exhibit 1 in 2018 CV 220

District Court, Larimer County, Colorado 201 LaPorte Avenue Fort Collins, Colorado 80521	FILED IN COMBINED COUNTY LARIMER COUNTY COLORADO 2019 FEB -1 PM 4:26
PLAINTIFF: Stacy Lynne v. DEFENDANTS: City of Fort Collins: Darin Atteberry Carrie Daggett Christopher Van Hall	COPY ▲ COURT USE ONLY ▲
Stacy Lynne 305 West Magnolia Street #282 Fort Collins, Colorado 80521 970-402-1582 stacy_lynne@comcast.net	Case Number: 2018CV172 Division: 4C
PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER PER COLORADO RULES OF CIVIL PROCEDURE (C.R.C.P.) 60(b)(2): FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY	

Plaintiff Stacy Lynne files this Rule 60 Motion and states the following facts as legal grounds:

An evidentiary hearing was held on October 1, 2018 in courtroom 4C. The Court issued the order on October 11, 2018. The statutory requirement for filing a Rule 60 motion within 182 days of the final order is satisfied.

LEGAL GROUNDS

It is very difficult for a plaintiff to prove her case when facts are hidden and when the defendant is cheating. Difficult. Not impossible. "...the lawyer must also be mindful of ethical obligations to the court and our legal system while navigating the administration of justice." *People v. Schultheis*, 638 P. 2d 8 – Colo: Supreme Court 1981, in *People v. Trogani*, 2008.

The Colorado Rules of Civil Procedure (C.R.C.P. 60(b)(2) provides one way through those obstacles.

"Government agencies treated same as other litigants. Absent an express statutory mandate to the contrary, government agencies are to be treated as would be any other litigant while before the court. *Biella v. State Dept. of Hwys.*, 652 P.2d 1100 (Colo. App. 1982).

"But nothing in this rule prevents a trial court from holding an evidentiary hearing on a motion under this rule if such a hearing would assist in reaching a just determination of the issues raised by the motion." *Sharma v. Vigil*, 967 P.2d 197 (Colo. App. 1998).

"Section (b) permits a trial court to rectify or reverse a prior judgment that, in light of new facts, is now erroneous." *People v. \$11,200.00 U.S. Currency*, 2013 CO 64, 313 P.3d 554.

When the evidentiary hearing commenced on October 1, 2018, Plaintiff requested that the witnesses be sequestered before any discussions about the hearing were had between the parties and the Court. (TR, 10/01/2018, page 4:18-23). Witness sequestration is a common practice, but the Court ignored Plaintiff and continued to talk about the case with the Defendants' counsel, Ms. Kimberly Schutt, while the witnesses were sitting in the courtroom. (TR, 10/01/2018, page

4:24-25; page 5:1-6). When Plaintiff asked the Court for an opportunity to reply to Ms. Schutt's statements about the privilege log, the court said "...it's not supposed to be a debate. I tried to start with you. You didn't want to do that. That's okay. But now you're gonna wait. Let me figure out what the issues are and then we'll proceed from there, because if there's not an issue I'd rather not waste time hearing testimony on it, so" – (TR, 10/01/2018, page 6:6-11). The Court's opening attitude toward the Plaintiff was odd, in light of the fact that Plaintiff was strictly adhering to standard court procedures and decorum. And although it is important to note that rocky start in the interest of preservation, the Court's initial approach to Plaintiff is not the main issue for this Rule 60 motion.

Next, the Court altered the purpose of the hearing: Plaintiff's motion was filed under statutory authority for order to show cause regarding the withheld documents including the production of an explicit privilege log. The Court changed the nature of the hearing into "why that attorney-client privilege is not because all the case law is pretty clear that that is considered the exemption there and so you'll have to first overcome that burden." (TR, 10/01/2018, page 7:2-16). Simply, Plaintiff filed her motion for an order to show cause regarding explicit privilege logs based on legislative intent, state and federal laws, and the rational legal arguments that were made in an order that was issued by another judge in this same judicial district. But the Court changed the focus of the hearing *after* the hearing had already begun. But even this – the Court changing the nature of the hearing and deciding the purpose of the hearing on the fly – is not the primary issue in this Rule 60 motion.

The Court issued the ruling in this case based in large part on the claim that Jeremy Call, as an employee of Logan Simpson Design and a contract employee for the City of Fort Collins, is protected by attorney-client privilege as determined in the four-prong test as specified in

Alliance Constr. Sol. Inc. v. Dept. of Corr., 54 P.3d 861 (Colo.2002). (ORDER, 10/11/2018, page 6-7). However, it wasn't until the very last moment at the end of the evidentiary hearing when the City of Fort Collins realized attorney-client privilege had been waived --- and only then did the City blurt out *Alliance*. Further, based on testimony from the evidentiary trial that is partially referred to below, neither the City, nor contractor Jeremy Call, believed or understood that there was an attorney-client relationship even as late as during Jeremy Call's time on the witness stand. And so, it appears that the attorney-client privilege claim was uttered in the final moments of the evidentiary hearing, as if shooting arrows-in-the-dark, to protect the City of Fort Collins from liability and adverse consequences that were bearing down on them in a collateral claim.

The ultimate trigger for this Rule 60 motion was pulled when Plaintiff filed a collateral lawsuit in December 2018 (*Lynne v. Noah Beals and Jeremy Call*, 2018 CV 220) and two days later, an insurance agent for Jeremy Call via Logan Simpson Design called Plaintiff. Those phone conversations, as well as an email from the City of Fort Collins (through attorney of record in both cases, Kimberly Schutt), is highly relevant to the trigger that set off this Rule 60 Motion.

This is the first phone conversation:

Jamie: Traveler's, this is Jamie.

Stacy Lynne: Hi. My name is Stacy Lynne. I am returning a phone call.

Jamie: Yeah, hey Stacy, how's it goin'?

Stacy Lynne: Good. How are you?

Jamie: Good. Um. We're the insurance company for Logan Simpson Design and I wanted to touch base with you regards the lawsuit that you filed. Do you have a couple minutes to speak?

Stacy Lynne: Well, I have a question. Are you representing them as legal counsel?

Jamie: No. I'm not an attorney. I'm an insurance adjuster.

Stacy Lynne: And so before we go any further, what is the purpose of your call?

Jamie: Well, I wanted to touch base with you um just to get an idea of you know why you filed the suit and wonder you know what you're looking for in terms of damages.

Stacy Lynne: Did you read the claim?

Jamie: Yeah, I read the 30-page complaint.

Stacy Lynne: Okay. Good, so....

Jamie: What is it that you're looking for....

Stacy Lynne: ...that should answer most of your questions. So, well...my...I'm really curious because you're kind of out of protocol I guess for an insurance company to call me instead of an attorney.

Jamie: Are you there?

Stacy Lynne: Yeah, can you hear me? Hello?

Jamie: Stacy, are you there?

Stacy Lynne: I am. Can you hear me? I'm here. Can you hear me?

Jamie: Yeah. I can hear you barely.

Stacy Lynne: So, I'm not sure what the problem is. I can hear you fine.

Jamie: Hello?

Stacy Lynne: Maybe we should try to reconnect.

Jamie: Alright Stacy. I can't hear you. I'm going to go ahead and disconnect.

This is the second phone call:

Jamie: Traveler's, this is Jamie.

Stacy Lynne: Hi. This is Stacy. Can you hear me better now?

Jamie: Yeah, I can hear you better.

Stacy Lynne: Yeah. Okay, so...

Jamie: Yeah, I read the complaint, um. What is it that you're looking for? Are you looking for some sort of financial compensation...um, an apology?

Stacy Lynne: Well, I'm...I'm sure you can understand that I can't talk to you. I mean, you're not an attorney. So I have no reason to talk to you. Do you understand? Does that make sense?

Jamie: Sure. I'm the one controlling all of the money flow, so...

Stacy Lynne: Right, but...

Jamie: So I suggest you'd want to talk to me.

Stacy Lynne: Well, considering that Jeremy Call, he testified prior that he was covered by the City of Fort Collins insurance...I'm not sure, is he jumping out of that relationship, or what is his position on that?

Jamie: I have no idea about any City of Fort Collins insurance. We insure Logan Simpson Design.

Stacy Lynne: Okay, I guess we're going to have to sort out the whole attorney thing before I can talk to you at all. Does that make sense? Because this is just completely out of order as far as the legal system goes unless Jeremy is not covered by the City of Fort Collins and then we have a whole different situation.

Jamie: Yeah, that's fine. So, have you been contacted by an attorney from the City on behalf of Jeremy?

Stacy Lynne: No, because they have 21 days to reply so this is really an early phone call I'm receiving, so I guess it's premature in a number of ways. **But if it turns out that Jeremy Call is not covered by the City of Fort Collins insurance or attorney/client relationship, then it's a different matter. But none of that has been sorted out yet as far as in writing or legally, so I guess we're going to have to wait until that's kind of settled.**

Jamie: Alright, well I appreciate the call Stacy. You have a good one.

Stacy Lynne: You too.

Jamie: Bye-bye.

Stacy Lynne: Bye.

This is Ms. Schutt's email to Plaintiff regarding Mr. Call's attorney:

On December 17, 2018 at 4:45 PM kschutt@wicklaw.com wrote:

Good afternoon, Ms. Lynne –

I have been retained on behalf of Mr. Beals to defend the above-referenced lawsuit you have filed in the Larimer County District Court. My understanding is that Mr. Beals was served on December 4, such that his Answer would be due on December 26th. If you have different information, please let me know.

Mr. Call is expected to have his own counsel, but his attorney is out of the country until December 28th.

Given the timing of this suit with the holidays and Mr. Call's attorney being out of the country, I am writing to request your stipulation to an extension of the Answer date for all defendants to January 11, 2019. Please advise whether you will agree to the requested

reasonable extension of the Answer deadline. We will of course consider similar courtesies if you need reasonable deadline extensions in the future.

Thank you,

Kimberly B. Schutt, Esq.

Plaintiff's reply to Ms. Schutt:

From: STACY LYNNE <stacy_lynne@comcast.net>
Sent: Tuesday, December 18, 2018 10:39 AM
To: kschutt@wicklaw.com; stacy lynne <stacy_lynne@comcast.net>
Subject: Re: Lynne v. Beals and Call - 2018 CV 220

Good Morning Ms. Schutt,

I agree to your request for an extension of the Answer deadline from the original due date of December 26, 2018, until January 11, 2019, with the following specific inclusions that you will state in the agreement to be filed with the Court:

1. The name and contact information for Mr. Call's attorney
2. A reference to your communication with Mr. Call's attorney that indicates he/she is out of the country
3. A reference to your communication with Mr. Call's attorney that indicates he/she agrees with this extension

Thank you,

Stacy Lynne

Without an explicit privilege log, it is impossible to know if the City of Fort Collins properly withheld public documents under the attorney-client exemption. Additionally, it is not possible for Plaintiff to meet her burden to show that the City of Fort Collins, and/or Noah Beals and/or Jeremy Call, waived attorney-client privilege without an explicit privilege log, and without Defendants' providing the withheld documents to this Court for *in camera* review.

One issue that prompted this 60B motion is that the City of Fort Collins and Jeremy Call of Logan Simpson Design filed legal documents in a collateral case that show inconsistencies in prior testimony regarding attorney-client relationships between the City of Fort Collins and Jeremy Call as an employee of Logan Simpson Design.

Crucially, Defendant Noah Beals testified that he does not understand what it means to waive attorney-client privilege.

TRANSCRIPT, 10/01/2018, pages 80-82:

80

THE COURT: All right. Anything further of this witness?

15 THE PLAINTIFF: Yes, one more –

16 THE COURT: Sure –

17 THE PLAINTIFF: – based on Ms. Schutt’s question.

18 Q What does it mean to waive attorney-client privilege? What would that look
19 like?

20 MS. SCHUTT: Objection, Your Honor. That calls for a legal conclusion.

21 THE PLAINTIFF: Actually, Ms. Schutt asked him if he had ever waived attorney22
client privilege, so I need to know if he knows what that means.

23 THE COURT: Okay. I’m actually going to overrule the objection just to put it in
24 context. You may answer the question.

25 THE WITNESS: I assume it would mean that you would give up a right of some
81

I sort.

2 Q BY THE PLAINTIFF: But specifically how Ms. Schutt was talking to you
3 about that, what – she asked you if you have waived attorney-client privilege in this
case.

4 So what would that mean?

5 A I would assume she was referring to my communications with an attorney.

6 Q Well, that would be discussing the case with an attorney, but what would it
7 mean if you waived it? How would you waive your privilege?

8 A I assume maybe in writing.

9 THE PLAINTIFF: Can I have a moment, please?

10 THE COURT: You may.

11 Q BY THE PLAINTIFF: When you say in writing, do you mean you would
12 have to actually write down that you’re waiving your – your privilege to have an
attorney13

client relationship?

14 A I – yeah, I think I would have to write down something saying that I was
15 waiving that.

16 Q And if you just talk to somebody, say your wife or a friend at the bar, if you
17 just talk to somebody about the case, what would that be?
18 A I don't know.
19 Q Have you talked to your wife or a friend or anyone outside of the City about
20 this case?
21 MS. SCHUTT: Your Honor, I'm just ask Ms. Lynne to clarify her question. Is she
22 talking about this case being the CORA proceeding or something else?
23 THE COURT: Just clarify the question.
24 Q BY THE PLAINTIFF: Have you talked to anyone outside of the City about
25 this specific CORA request and this hearing today?
82
MS. SCHUTT: Objection. I – I think it's a compound question. 1 She's got to ask
2 one or the other.
3 THE COURT: Okay. Break it up into two – two separate questions so that he can
4 answer them separately.
5 Q BY THE PLAINTIFF: Have you talked to anyone outside of the City about
6 this hearing today?
7 A Yes.
8 Q And who was that?
9 A My family.
10 Q Any friends? Acquaintances?
11 A Not that I recall. Just mostly my family.
12 Q And would Jeremy Call be considered a family friend or city relationship?
13 A He's definitely a – a contractor with the City that we've hired, and I have
14 known him as a – a friend outside –
15 Q And have you talked to him about this particular hearing and this particular
16 CORA request?
17 A Only what was already mentioned in his testimony.
18 Q So you did talk to him outside of this courtroom?
19 A About this particular – only what I've already said, that he called me and
20 asked me –
21 THE PLAINTIFF: So I – I want to make another record, and that is that it appears
22 that Mr. Beals does not understand what it means to waive attorney-client privilege
and
23 also that it appears that he has waived attorney-client privilege.

If Noah Beals does not know what it means to waive attorney-client privilege, he
certainly cannot be expected to know how to *not* waive the privilege.

The first part of the four-part test in *Alliance* says, "...for privilege to apply the
information-giver must be an employeec, agent, or independent contractor with a significant
relationship not only to the governmental entity **but also to the transaction** that is the subject of

the governmental entity's need for legal services." (Emphasis added.) *Alliance Const. Solutions, Inc. v. DOC* 54 P. 3d 861 – Colo: Supreme Court 2002.

For example, what if the transaction (the email, voicemail message, text message, etc.) was not actually legal advice or legal services but it was instead a communication that would adversely impact the City's position on a collateral lawsuit? If that were the case, then it would be convenient (although illegal) for the governmental entity and the contractor to pretend that the withheld communications were legal advice, when in fact, the withheld information was nothing of the sort. Perhaps the information would provide deep evidence for the plaintiff on a collateral lawsuit. Guilty knowledge and motive...plus who stands to benefit from the withholding of public records...all become compelling reasons for the production of an explicit privilege log. In this case, 2018 CV 172, *Lynne v. City of Fort Collins*, it appears from the records that Plaintiff has in her possession, that some of the withheld documents include communications between Noah Beals and Jeremy Call and third parties. How can we know for sure that the City of Fort Collins is not simply withholding documents because of the deeper damage that would be done to the City in a collateral lawsuit? Isn't this exactly why the legislature provided the show-cause hearing as a remedy for public record's seekers who have been denied access to records that are deemed public?

If Plaintiff does not have an explicit privilege log – the contents of which are verified by *in camera* review – then it seems impossible for Plaintiff to prove either explicit or implicit waiver of attorney-client privilege. And then, how can we move past that first prong, and onto the next three elements, without being absolutely certain that prong one is based on the truth of the matter? Noah Beals' testimony and Jeremy Call's testimony elicit substantial doubt about prong one.

Importantly, *Alliance* says that if prong one is satisfied, then “the entity must also show: (2) that the communication was made for the purpose of seeking or providing legal assistance; (3) the subject matter of the communications was within the scope of; and (4) ...legal counsel regarded the communications as confidential and treated them as such.” *Alliance Const. Solutions, Inc. v. DOC*, 54 P.3d 861 – Colo: Supreme Court 2002

The Court says “any communication to Mr. Call by Noah Beals did not waive attorney-client privilege.” (ORDER: 10/11/2018, page 6). But without in camera review of the withheld documents, we can’t know for sure if Mr. Call and Mr. Beals waived attorney client privilege by discussing privileged information with others. And if attorney-client privilege was waived, then prong one is viewed differently and the remaining three prongs are no longer relevant.

Complicating the problem that we aren’t sure if attorney-client privilege was waived because we don’t know which documents were withheld, is the fact that Noah Beals testified.

Mr. Beals admitted in his testimony that he did not even know what “waiver” means. If it is true that the withheld documents were indeed protected under attorney-client privilege, then it is reasonable to expect that the attorney would have explicitly advised her client that the information is confidential and that it should not be discussed with third parties because of attorney-client privilege. It is obvious from Mr. Beals’ testimony that no such conversation occurred between himself and his attorney. This all adds to the likelihood that the withheld documents do not involve matters that are protected by attorney-client privilege.

Similarly, if Mr. Call had communicated with the City of Fort Collins about information that is protected by attorney-client privilege, then surely Mr. Call would have been advised by his attorney (the City of Fort Collins) to keep those communications confidential and away from

third parties. Based on Mr. Call's testimony on October 1, 2018, and his actions that are at issue in a collateral case, it appears that no such warning was given.

TRANSCRIPT, 10/01/2018; PAGES 63-67:

63

24 Q So you called Noah when you got the summons?

25 A Yes, not – not knowing who to contact. I've never been subpoenaed before.

64

Q And what I did Noah say to you?

2 A He said please contact Mr. Duval.

3 Q And Mr. Duval said what?

4 A And he said that – that they may contact me prior to the – to this proceedings

5 to – and with Kim to meet with the witnesses.

6 Q And did they do that?

7 A Ten minutes prior to – to walking into the proceedings.

8 THE PLAINTIFF: Can I have a minute, please?

9 THE COURT: You may.

10 Q BY THE PLAINTIFF: Is the City of Fort Collins representing you as an

11 attorney? Are they your attorney?

12 A I will let them answer that.

13 Q Well, actually you can't direct them to answer.

14 A I'm not privileged to know whether they are representing me or not.

15 Q You don't know if they're your attorney or not?

16 MS. SCHUTT: Your Honor, I object to relevance.

17 Q BY THE PLAINTIFF: As a – As a – are you a contractor or a sub-contractor

18 for the City of Fort Collins?

19 A Contractor.

20 Q You're a contractor. And as a contractor are contractors regularly

21 represented by the City of Fort Collins?

22 A That would be at the discretion of the City of Fort Collins.

23 Q And in your contract is the City of Fort Collins representing you?

24 A No, that – that is not spelled out in the contract.

25 Q So you don't – your understanding is that they are not your attorneys?

65

1 A My understanding is that I do not know if they are my attorneys.

2 Q Did you talk to your own company about who your attorney was before you

3 appeared here today?

4 A Yes.

5 Q And what did they say?

6 A They said to ask the City of Fort Collins if they would represent me.

7 Q So you still don't know who your attorney is?

8 A I did not ask the City that question.
9 THE PLAINTIFF: Judge Blanco, can we clarify whether the City is representing
10 this individual?
11 THE COURT: Well, what is – I mean, I guess I'm still trying to figure out
12 regardless of that issue, I mean, you're trying to establish that there has been a waiver
13 of
14 the privileged information by Mr. Beals communicating with this individual. If I
15 presume
16 they don't have an attorney-client privilege, the communication that he – they are still
17 discussing doesn't seem to be a waiver of the City's attorney-client privilege which I
18 think
19 is the relevance.
20 THE PLAINTIFF: Absolutely. So if Mr. Beals talked to Mr. Call about issues that
21 are protected that are – that have been withdrawn or withheld from my request, if Mr.
22 Beals
23 has talked to Mr. Call about that, that's a waiver.
24 THE COURT: It could be a waiver if he's not being represented. I agree with you.
25 But I don't know that I've heard anything that establishes that the communications was
26 privileged information that Mr. Beal (sic) provided. Go ahead.
27 THE PLAINTIFF: Right. So we – because we don't know what has been withheld
28 because there's no log, we don't actually know. And so I need to know who his
29 attorney
30 is first of all, because if he's represented by the City then he falls under that – that
31 huge
32 umbrella of –
33 THE COURT: But if I presume he's not represented by the City – I guess what I'm
34 saying is I still don't know that you have met the burden that there has been a waiver.
35 THE PLAINTIFF: And that's why the explicit log is so important –
36 THE COURT: Okay.
37 THE PLAINTIFF: – in these cases because if they are not – if I can't find out, then
38 there's no way I can prove what's been waived.
39 THE COURT: I understand. But I don't know if there's any additional testimony
40 you want to elicit from this gentleman.
41 THE PLAINTIFF: One more moment, please.
42 THE COURT: Sure.
43 Q BY THE PLAINTIFF: Did you say that Noah Beals is your contact person?
44 Is he – he's the person who's actually guiding the project or guiding you? How did you
45 say that? What's your hierarchy between you and Noah Beals?
46 A We – We consider him to be the point of contact for Logan Simpson or the
47 project manager at the City for the sign code update.
48 Q So in simple terms he would be your boss or your supervisor?
49 A He would be the City point of contact or project manager.
50 Q But it doesn't work the other way. You don't tell him what to do, right?
51 A We do advise him technically on the development of the sign code.
52 Q And technically – does technically include legal issues sometimes?
53 A Yes, in regards to the interpretation of sign codes in relationship to Supreme

23 Court cases.

24 Q And are you an attorney?

25 A No.

67

Q 1 Who – Who advises Noah legally from your perspective?

2 MS. SCHUTT: Objection, Your Honor. I don't think it matters what he thinks.

3 THE COURT: Sustained.

4 Q BY THE PLAINTIFF: When you have a legal issue in your relationship
5 with Mr. Beals, who tells you about the legal issues? So you're not an attorney. You
6 don't

6 – You don't tell – talk to him about the law or any legal procedures. Is that correct?

7 A No, we routinely anticipate the implications of – of past case law and

8 Supreme Court decisions and legislation regarding sign codes and use those as a basis
9 for

9 developing a legally compliant sign code.

10 Q So are you saying you interpret those laws or do you have a staff attorney?

11 Who – Who pre- – who makes the legal determination go from you to Noah Beals?

12 A We do not have a land use attorney on this project.

13 Q So you read the statutes and the laws and then you tell Noah what your
14 interpretation of those are?

15 A We – We do advise on the technical content of the sign code.

16 Q So you're interpreting the laws and the statutes yourself?

17 A Mm-hmm.

18 Q And you transfer that legal information to Mr. Beals?

19 A Yes.

As this testimony illustrates, Jeremy Call and the City of Fort Collins entered the courtroom to testify at an evidentiary hearing without any clear understanding of the attorney-client relationship between Jeremy Call and Noah Beals and the City of Fort Collins.

More explosive than Mr. Call's testimony that he and the City did not have a recognizable attorney-client relationship is that the City of Fort Collins OBJECTED to the relevance of my questions regarding Mr. Call's attorney-client relationship with the City of Fort Collins. How is it possible that a question to a witness about attorney-client privilege waiver at a hearing based on attorney-client privilege waiver is objectionable? It was only after Mr. Call's testimony that the City of Fort Collins realized that, in fact Mr. Call and Mr. Beals had both waived attorney-client privilege...and that is when the focus of this case did a 180. And that is

why at the very last moment, the City of Fort Collins panicked and yanked Jeremy Call under their umbrella.¹

How bizarre. Mr. Call, while under oath, said that he did not know who his attorney was but he walked into a courtroom, raised his right hand and swore to tell the truth on the witness stand.

Stranger still. Mr. Call said “we do not have a land use attorney on this project” and that he (Call) interprets the laws and statutes himself and then transfers that legal information to Mr. Beals. Why would Mr. Call say something so outrageously inaccurate? The City of Fort Collins hired and has a written contract with a law firm and a named attorney from that firm that is being paid for the specific purpose of walking the City through the legal aspects of the sign code update process. But Mr. Call says *he* does all that legal wrangling? Really? How can that be true? Especially in light of Mr. Call’s testimony that he does not even know what the word “sequester” means.² How can Call possibly dissect and disseminate anything more difficult than that word?

And then, Kimberly Schutt, attorney for City of Fort Collins, argued that Plaintiff’s reliance on Judge Odell’s order in the Poudre School District case had no resemblance to the case at issue here. Schutt told the Court that “Judge Odell *reached* to interpret our Colorado

¹ TR, 10/01/2018, 122;22-25 and 123:1-5.

² TR, 10/01/2018, 61:6-13.

Q Have you talked to them about this particular proceeding? Tom and Laurie.

A Not prior to 10 minutes before the proceeding began.

Q But you did talk to him about it 10 minutes ago.

A Yeah.

Q What did you talk to them about?

A In the sense that we were sequestered in the hallway.

Q So do you know what it means to be sequestered?

A I’m sorry, I don’t.

CORA statute based on federal laws and based on a case known as *Alcon v. Spicer* (sic) which had nothing to do with attorney-client privilege.”³ (Italics added.) Why would Ms. Schutt tell this Court that Judge Odell was reaching? Just because Courts are not bound by anything outside of precedents that are set in cases by higher courts, does not mean that a district court judge is “reaching” when he studies federal laws and then applies those higher laws to local legislative intent. In fact, Judge Odell’s reasoning in the Poudre School District case do apply to this present case: an explicit privilege log satisfies the intent of the legislators when they determined that the public’s best interest is best served when the public has access to public documents. The attorneys in the Poudre School District tried to claim that records were protected by attorney-client privilege, but to make sure the District wasn’t just throwing down a privilege exemption to protect itself from damning and justifiable litigation, an explicit privilege log boosts honest transparency, without violating actual attorney-client privilege exemptions.

Plaintiff isn’t stretching when she relies on Judge Odell’s “reaching” as Ms. Schutt accuses. Judge Odell’s careful analysis and application of open records laws in the Poudre School District case regarding explicit privilege logs is directly relevant to this case.

³ TR, 10/01/2018: 122:5-7.

SUMMARY

The City of Fort Collins knew that attorney-client privilege had been waived at the time they testified at the evidentiary hearing in this case. But Plaintiff Stacy Lynne could not have known what they knew—she suspected they were dodging the truth, but mere suspicions are problematic without evidence. But then, when Plaintiff Stacy Lynne filed a collateral lawsuit against Noah Beals and Jeremy Call, the relationship between the City of Fort Collins and Mr. Call took an interesting turn: the City and Jeremy Call are no longer standing under the same umbrella. Why did the City leave Jeremy Call standing in the rain on the second case? Is it because Jeremy Call is too great a liability for the City now? Attorney-client privilege protections were not meant to be used by the government as a convenient way to avoid responsibility and hide wrongful acts by employees.

CONCLUSION

Plaintiff respects the sanctity of the attorney-client relationship and she fiercely protects those relationships as a standard part of her work as an investigative journalist. So— that is not an issue here.

Is the public simply to take the government's word that the government is telling the public the truth? Of course not. That is one obvious reason why the open records act exists in the first place – to make sure the government is telling the truth by letting the public look at the records the government keeps. If the public could inherently trust what the government was telling it, then the public would have no need for open records laws. Just because the City *says* the withheld documents are exempt from release because of attorney-client privilege doesn't

mean it's true. It's a sad reality that sometimes people are dishonest, but it's a reality nonetheless.

We do not know—and we cannot know—if the City of Fort Collins withheld documents that meet the legal exemption for attorney-client privilege, unless this Court is able to review *in camera* the withheld items. That is one way the Court can apply checks and balances. The public's checks and balances for their government are provided in the law. In this case, the law that provides a measure of checks and balances is the Colorado Open Records Act. The Honorable Devin Odell, now a retired Eighth Judicial District court judge, issued a compelling order that fortified the legislative intent of the open records laws. Judge Odell understood that without an explicit privilege log, the Poudre School District could claim privilege exemptions without any way for the public to ensure that the government was telling the truth.

We do not know if attorney-client privilege is a valid claim in this case, not because there is a dispute about whether contractors are covered under the umbrella of an attorney-client relationship, but due to the fact that without *in camera* review and an explicit privilege log, we do not know if the application of the privilege exemption to the withheld documents was legitimate.

And, Jeremy Call can't have interchangeable titles/roles/responsibilities simply because it suits the City's subversive desires. Clearly, the law did not intend for attorney-client privilege protections to provide an escape hatch for defendants who want to conceal facts that have weight in collateral lawsuits.

Incomplete justice – unfinished business – leaves a bad taste. Rulings and orders that are based on fraud, misrepresentations, and other misconduct is not fair. It's not fair to the defendant, to the plaintiff, or to the judge.

Let's finish with this incongruity:

A. The burden to prove that the defendant waived attorney-client privilege rests on the plaintiff.

But.

B. The second prong in the *Alliance* four-part test says that the communication sought to be protected was “made for the purpose of securing legal assistance”. The third prong in the *Alliance* four-part test says that the “entity must show that the subject matter of the communication was within the scope of the duties provided to the entity by its employee, agent, or independent contractor”. The fourth prong in *Alliance* says that the entity “must show that the communication was treated as confidential and only disseminated to those persons with a specific need to know its contents.”

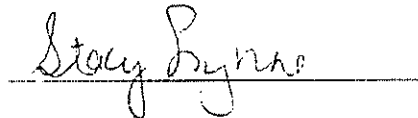
And so, there is a built-in legal obstacle between the application of *Alliance* – where that precedent requires that it is the *entity* who must show that the four-part test is complete – but the burden under CORA laws is on the plaintiff to prove that the defendant waived attorney-client privilege. How can a plaintiff satisfy *Alliance* without knowing which records have been withheld?

This is why Plaintiff Stacy Lynne relies so strongly on the now-retired Honorable Judge Devin Odell's brilliant analysis and logical findings that an explicit privilege log – it overcomes the incongruity between CORA laws and *Alliance* to provide a fair and legal remedy.

Therefore, in light of all that went wrong in this case, Plaintiff Stacy Lynne requests that the Court:

1. Conduct a new evidentiary hearing because the Order finding that attorney-client privilege was not waived was decided based on information that was misleading, misrepresentative, and/or fraudulent – the evidence of which was provided in testimony at the evidentiary hearing in case 2018 CV 172 – *Lynne v. City of Fort Collins* and via legal documents that were recently provided to Plaintiff by Defendants Noah Beals, City of Fort Collins and Jeremy Call/Logan Simpson Design in collateral case 2018 CV 220 – *Lynne v. Beals and Call*
2. Provide any other relief that is allowable under the Court's discretion and this Rule 60(b)(2) motion

Respectfully filed on Friday, February 1, 2019.

A handwritten signature in cursive script, reading "Stacy Lynne", is written over a horizontal line.

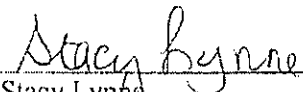
Stacy Lynne

CERTIFICATE OF SERVICE

I certify that on Friday, February 1, 2019, a true and accurate copy of the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER PER COLORADO RULES OF CIVIL PROCEDURE (C.R.C.P.) 60(b)(2): FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY** was served via USPS to all parties:

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