

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500</p>	
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>Defendants: THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p>Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Defendant City of Fort Collins:</i> John W. Mill (#22348) Rosemary A. Loehr (#52559) Sherman & Howard L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone Number: (303) 297-2900 Email: jmill@shermanhoward.com rloehr@shermanhoward.com</p> <p>Carrie M. Daggett, #23316 John R. Duval, #10185 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80522-0580 970-221-6520 cddaggett@fcgov.com, jduval@fcgov.com</p>	<p>Case No.: 2018CV149</p> <p>Courtroom/Division: 5B</p>
<p>MOTION TO QUASH SUBPOENAS</p>	

The City of Fort Collins (the “City”), by and through its counsel, respectfully submits the following Motion to Quash Plaintiff’s subpoenas of Ms. Rita Knoll and Ms. Delynn Coldiron pursuant to C.R.C.P. 45(c)(3). Ms. Coldiron is the City Clerk and Ms. Knoll is the Deputy City Clerk of the City of Fort Collins.

Certificate of Conferral: Pursuant to C.R.C.P. 121, § 1-15(8), the City’s undersigned counsel conferred with Plaintiff regarding the relief sought in this Motion. Plaintiff opposes the City’s Motion.

INTRODUCTION

On Tuesday, March 12, 2019 at approximately 2:30 p.m., Plaintiff left two subpoenas at the front desk of the City of Fort Collins’s City Clerk’s Office. See **Exhibits A** and **B**, *Receipt of Service on Rita Knoll and Delynn Coldiron*, respectively. These subpoenas, attached herein as **Exhibits C** and **D**, requested Ms. Knoll and Ms. Coldiron to appear, testify, and produce documents for a hearing at 1:30 p.m. on Friday, March 15, 2019. On Thursday, March 14, 2019, at approximately 11:20 a.m., counsel for the City contacted Plaintiff to advise him of its intent to file a motion to quash the subpoenas on the grounds that the service of the subpoenas was defective and that the request for production was untimely. Plaintiff noted his opposition to the motion to quash. Later that day, at approximately 1:30 p. m., Plaintiff served two “new” subpoenas on Ms. Knoll and Ms. Coldiron. See **Exhibits E** and **F**, *03-14-19 Subpoenas on Rita Knoll and Delynn Coldiron*, respectively. The content of the second set of subpoenas is identical to the first set.

Both sets of Plaintiff’s subpoenas fail to comply with the requirements of Rule 45, the rule governing subpoenas, for the following reasons:

- (1) The subpoenas improperly request the production of documents in less than fourteen days.
- (2) The service of the subpoenas was defective.
 - a. The first set of subpoenas were not personally served on Ms. Knoll and Ms. Coldiron.
 - b. The second set of subpoenas improperly request testimony in less than forty-eight hours.
- (3) The request to produce documents is unduly burdensome because it is largely duplicative of two requests by Mr. Sutherland to the City to produce documents under the Colorado Open Records Act (“CORA”), C.R.S. §§ 24-72-200, et. seq.

ARGUMENT

Plaintiff’s subpoenas compelling Ms. Coldiron and Ms. Knoll to testify and produce documents at the March 15, 2019 hearing are defective and should be quashed. Strict compliance with Rule 45 is mandatory. *See Wiggins v. Wiggins*, 2012 CO 44, ¶ 2 (ordering a protective order when party issuing the subpoena “frustrated the purpose of Rule 45” and noting the availability for sanctions for noncompliance); *see also Adams v. Sagee*, 2017 COA 133, ¶ 10 (“[P]ro se parties must comply with procedural rules to the same extent as parties represented by attorneys.”). Because Plaintiff’s subpoenas for documents and testimony contravene Rule 45, the subpoenas are defective. Accordingly, this Court should quash the defective subpoenas and hold that the City is not required to comply with them.

I. Plaintiff’s Request For Production Of Documents Is Facially Invalid

Plaintiff’s request for production of documents violates the requisite timing outlined in Rule 45. Rule 45(b)(1)(C) mandates that a subpoena commanding the production of documents

“shall be made not later than 14 days before compliance is required.” Plaintiff issued his first subpoenas requiring attendance and production a mere seventy-two hours before the time of compliance and then issued his second set of subpoenas with only twenty-four hours to comply. Subpoenas that fail to abide by the timing requirements of Rule 45 are properly quashed. *See Blasi v. Zamora*, 2014 Colo. Dist. LEXIS 2501, *1-2 (magistrate order quashing a subpoena that requested the production of documents within ten days); *see also Wiggins*, 2012 CO at ¶ 34 (issuing a protective order to return or destroy documents produced in response to a subpoena that was issued three days prior to the time of compliance). Therefore, this Court should quash Plaintiff’s subpoenas to relieve Ms. Coldiron and Ms. Knoll of the request to produce documents.

II. Plaintiff’s Defective Service Invalidates The Subpoenas

Plaintiff’s service of the subpoenas on Ms. Knoll and Ms. Coldiron was defective. Rule 45(b) requires (1) that the subpoena is delivered to the “named person...unless otherwise ordered” and also requires (2) that subpoenas to testify are served “no later than 48 hours before the time for appearance set out in the subpoena.” Plaintiff failed to comply with both of these requirements.

Regarding the first set of subpoenas, Plaintiff failed to execute personal service. Rather than serving Ms. Coldiron and Ms. Knoll personally, Plaintiff delivered the subpoenas to their place of work, the City Clerk’s Office, and simply left the subpoenas at the front desk of the office. *See Exhibits A and B*. While this type of substituted service would be permissible for serving other documents, it is not permissible for serving a subpoena. *See Ariel v. Pena*, 2016

Colo. Dist. LEXIS 955, *1 (“A subpoena to testify at a trial is governed by C.R.C.P. 45(b) (2), which unlike C.R.C.P. 4(e), requires personal service upon the person and does not permit substituted service.”).

Regarding the second set of subpoenas, while Plaintiff executed personal service, the serve was untimely. Rule 45(b)(1)(A) requires service of a subpoena to appear at a trial or hearing at least forty-eight hours beforehand. Plaintiff did not serve the second set of subpoenas until approximately 1:30 p.m. on Thursday March 14, 2019 – only twenty-four hours before the time for appearance set out in the subpoenas at a hearing at 1:30 p.m. on Friday, March 15, 2019. Therefore, the second set of subpoenas are defective as well.

III. The Requests To Produce Are Unduly Burdensome

Finally, Plaintiff previously submitted two CORA requests to the City of Fort Collins seeking generally the same documents. The first request was sent on January 29, 2019, to which the City responded and produced documents on February 4, 2019. The second CORA request was sent on March 10, 2019, to which the City responded and produced documents on March 14, 2019. Plaintiff’s subpoenas are another, burdensome attempt to receive the same documents he has previously requested and received.

CONCLUSION

Because both sets of Plaintiff’s subpoenas on Ms. Coldiron and Ms. Knoll were defectively executed and facially invalid, those subpoenas should be quashed.

Dated this 14th day of March, 2019.

SHERMAN & HOWARD L.L.C.

s/ Rosemary A. Loehr

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CERTIFICATE OF SERVICE

I certify that on the 14th day of March, 2019, a true and correct copy of the foregoing **MOTION TO QUASH SUBPOENAS** was filed via Colorado Court's E-Filing system, and was served on the following:

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/s/ Patricia A. Rendoff

Patricia A. Rendoff, Legal Secretary