

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO  Larimer County Justice Center  201 Laporte Avenue, Suite 100  Fort Collins, CO 80521-2761  (970) 498-6100</p> <hr/> <p><b>Plaintiff: STACY LYNNE</b></p> <p><b>v.</b></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>COURT USE ONLY</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 BEAL’S RESPONSE TO PLAINTIFF’S EMERGENCY MOTION FOR DELAY OF HEARING</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 Emergency Motion for Delay of Hearing on Attorney’s Fees Scheduled for Monday, August 5, 2019:

1. Plaintiff has filed an emergency motion seeking a continuance of the hearing on attorney’s fees scheduled for this coming Monday, August 5, 2019. Plaintiff did not confer with undersigned counsel prior to filing the motion. She also included no Rule 121 certification explaining her failure to comply with that rule.

2. Plaintiff’s motion is premised on a number of allegations against undersigned counsel, taking issue with the Defendant’s filing of a supplemental attorney fee affidavit and a courtesy email (copy attached as Exhibit A) notifying her that the Defendant may call an expert witness (attorney Daniel Muffly) to testify as to the reasonableness of the fees, to the extent necessary or requested by the Court. The need to call Mr. Muffly depends to a large extent on the position Plaintiff takes at the hearing and whether she meets her shifted burden to prove that the fees incurred are unreasonable. Plaintiff never responded to that email.

3. As to Plaintiff's assertions in her motion, Defendant Beals would first state that he did not file a motion; he simply supplemented the fee affidavit previously submitted to the Court following this Court's dismissal of the action. As set forth in the notice accompanying the supplemental affidavit, the need to supplement was caused by the Plaintiff's filing of a Rule 59 motion (which was ultimately denied by the court) and the Court's setting of this fee hearing, which has caused additional attorney's fees to be incurred on an ongoing basis. Defendant is entitled to be awarded those ongoing fees, and submitted the supplemental affidavit once the bulk of those additional fees had been incurred preparing for the hearing set for next week. That is a common practice in these types of proceedings.

4. The process for determining an award of attorney's fees is set forth in C.R.C.P. 121 §1-22. That rule provides, in pertinent part, as follows:

**(c) Hearing; Determination of Motion.** Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney fees awarded under this practice standard shall be taxed as costs. [Underlined emphasis added].

5. The Defendant met his initial burden of establishing the amount of fees to be awarded through the submission of an affidavit from counsel attesting to the lodestar amount, a detailed listing of the work performed in defense of this action and the other factors to be considered for the Court's determination as to reasonableness. Under well-established Colorado legal authority, this submission meets the Defendant's initial burden of proof, and creates a strong presumption of reasonableness. *See, Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 147-48 (Colo. App. 1996) While Plaintiff filed an objection to the attorney fees on May 4, 2019, it simply referred to her then-pending Rule 59 motion as the basis for her objection to the fees, and suggested the Court should not award any additional fees incurred after the Defendant's filing of the motion to dismiss (without citing any legal authority to support said proposition).

6. Plaintiff's objection did not a request a hearing, nor did it state (as required by Rule 121 §1-22(c) above), the issues which she believed should be addressed at any hearing. The Court nevertheless issued an order setting a hearing on the award of attorney's fees. At no time has Plaintiff made a disclosure of any witnesses or other proof she intends to offer at the hearing, nor has she ever articulated any issues which she believes need to be addressed at the hearing. Accordingly, the Defendant has been left to guess what the hearing will be focused on,

and has retained an expert which may be called to rebut any assertions or evidence that the Plaintiff may produce at the hearing scheduled for Monday.

7. As a courtesy, Defense counsel notified the Plaintiff that the Defendant may call attorney Daniel Muffly and provided a copy of his biography. The supplemental fee affidavit was provided to her via email (along with US mail) five days prior to the hearing, and the email was sent to her four days prior to the hearing.

6. Plaintiff's emergency motion for a continuance does not articulate how she has allegedly been prejudiced by being provided this additional information several days prior to the scheduled hearing, or how the granting of a continuance will supposedly allow her to prepare to meet her shifted burden to demonstrate that the fees requested by the Defendant are somehow unreasonable. She simply states that she allegedly has some "explosive" video involving a city employee that apparently relates to the underlying defamation claim (which has already been properly dismissed); it does not appear to have any bearing on the limited issues to be resolved at this hearing, namely what attorney's fees have been incurred and whether they were reasonable. Rather, the delay urged by the Plaintiff will only cause additional fees to be incurred in the defense of this action.

7. There is no valid basis for sanctions or disciplinary action as asserted by the Plaintiff. Quite to the contrary, undersigned counsel specifically provided this information to the Plaintiff prior to the hearing in an effort to be transparent. There is also no valid basis for the requested continuance; however, this is a matter committed to the sound discretion of the Court, and the Defendant will defer to the Court as to whether one should be granted. Defendant notes, however, that he will continue to incur additional fees related to Plaintiff's efforts to delay these proceedings and will be entitled to an award of those ongoing fees as part of the taxing of costs in this case.

WHEREFORE, the Defendant objects to the requested continuance. To the extent the Court allows one in the exercise of its sound discretion, the Defendant requests that he be awarded any additional fees incurred as a result of said delay.

Respectfully submitted this 2<sup>nd</sup> day of August, 2019

WICK & TRAUTWEIN, LLC

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

*[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]*

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR DELAY OF HEARING** was filed via the Colorado Courts E-Filing System and served this 2<sup>ND</sup> day of August, 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*

*s/ Kimberly B. Schutt*  
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*[The original certificate of electronic filing signed by Kimberly B. Schutt is on file at Wick & Trautwein, LLC)*