

DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	DATE FILED: August 21, 2019 9:21 AM FILING ID: 32EA3DABC76A0 CASE NUMBER: 2018CV220
<hr/> <b>Plaintiff: STACY LYNNE</b>  <b>v.</b>  <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>	COURT USE ONLY
Kimberly B. Schutt, #25947 WICK & 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>	Case Number: 2018 CV 220  Courtroom: 3C
<p style="text-align: center;"><b>DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS</b></p>	

COMES NOW, the Defendant, Noah Beals, by and through his counsel of record, Kimberly B. Schutt of Wick & Trautwein, LLC, and respectfully submits the following response to the Plaintiff's Motion for Sanctions. In support hereof, Defendant Beals states as follows:

1. Plaintiff has filed a motion asking the Court to impose sanctions against defense counsel. The motion cites no rule or statute as the basis for the requested sanctions, nor does it state what sanctions the Plaintiff seeks. Rather, it simply makes broad allegations of "rookie mistakes" and asserts that defense counsel has purportedly misstated or misused rules, procedures and laws, without citing any such specific rules, procedures, laws or court orders which have allegedly been violated. It also makes references to a federal court case in which

undersigned counsel represented a defendant police officer (and to which Ms. Lynne was not a party or privy to any confidential information relating to the resolution of that case), references to complaints allegedly made against undersigned counsel by the Plaintiff to the Office of Attorney Regulation, complaints about how she is allegedly treated by undersigned counsel and Larimer County attorney David Ayraud (who has no involvement at all in these proceedings), and other general accusations. Its lone reference to any legal authority whatsoever is to a 10-year-old nonbinding administrative disciplinary action against another attorney, *People v. Maynard*, 238 P.3d 672 (Office of Presiding Disciplinary Judge of the Supreme Court of Colorado, 2009), which Plaintiff asserts is “interesting” and suggests involves similar issues.

2. Suffice it to say that Defendant and his counsel strongly dispute Plaintiff’s unsupported assertions and opinion-based mischaracterizations. However, the fact of the matter is Plaintiff has altogether failed to provide any evidence of a violation of any rule, law or court order, or any other conduct, which would justify the imposition of sanctions against defense counsel in this case. Indeed, undersigned counsel has not ever been sanctioned or disciplined in any of the other matters referenced by Ms. Lynne, or at any other time during the course of her 25 years as a licensed attorney in good standing in Colorado.<sup>1</sup> Plaintiff’s reliance on an

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<sup>1</sup> For the record, a copy of the order from Larimer County District Court Judge Susan Blanco in Larimer County District Court Case No. 2018 CV 172, as referenced by the Plaintiff on pages 2-3 of her motion, is attached hereto as **Exhibit A**. Plaintiff suggests in this latest motion for sanctions she was advised by Judge Blanco to make a complaint against undersigned counsel in that other case, but Judge Blanco’s order speaks for itself. In that instance, the Plaintiff filed a motion for sanctions against undersigned counsel and Deputy City Attorney John Duval because the City defendant attached a copy of the Court of Appeals’ order in 2018 CA 324, *Lynne v. Fields*, an order which was of public record and readily available on the Court of Appeals’ website, in support of the City’s assertion that the Plaintiff had a history of being stubbornly litigious and vexatious, so as to justify an award of the defendant’s attorney’s fees related to Lynne’s Rule 60 motion filed in that case. Judge Blanco summarily denied Ms. Lynne’s motion for sanctions in that case before defense counsel even had received it in the mail, let alone had an opportunity to respond. Ironically, notwithstanding Lynne’s complaints about the defendant City submitting a copy of the Court of Appeals order in *Fields* to support its position in case then pending before Judge Blanco, the Plaintiff now attaches to her motion for sanctions here a copy of her Petition for Writ of Certiorari in *Fields*, although the

unrelated administrative disciplinary proceeding against another attorney in *Maynard*, limited to those specific facts, also provides no valid basis for the imposition of sanctions here.

3. The impetus for Plaintiff's motion seems to be that, on August 1, 2019, undersigned counsel provided Plaintiff with a courtesy notice that the Defendant intended to have a may-call expert witness at the attorney fee hearing then scheduled for August 5, 2019, along with the defendant's submission of a supplemental attorney fee affidavit on July 31, 2019. As set forth in Defendant Beals' response to Plaintiff's emergency motion for a continuance of the fee hearing, this witness was simply retained to provide rebuttal testimony, if necessary, due to the fact that: 1) the hearing was set even though the Plaintiff never requested one; 2) Plaintiff never fulfilled her obligation under C.R.C.P. 121 §1-22 to articulate the issues she believed should be addressed at the hearing (and still has not done so); and 3) the Plaintiff herself had not disclosed any witnesses or exhibits that she intended to use to meet her shifted burden to prove the fees set forth in the affidavits were not reasonable. Therefore, at that point (and still), the Defendant was left to guess what issues the Plaintiff intended to address at the hearing and whether she would be presenting any witnesses or exhibits to support her position.

4. Significantly, Plaintiff failed to articulate in her motion for a continuance and now in her motion for sanctions any specific prejudice which she allegedly suffered as a result of the Defendant providing her this information several days in advance of the hearing then scheduled for August 5, 2019. To the extent there was any actual prejudice, which Defendant denies, the

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purpose of doing so is unclear. That Petition has been denied by the Supreme Court. *Lynne v. Field*, 2019 WL 20178118 (Colo. May 20, 2019).

continuance of that hearing to September has arguably provided the Plaintiff with sufficient time to prepare for that proceeding.

5. In short, there is no meritorious basis whatsoever for the imposition of sanctions against defense counsel here. Defense counsel has taken appropriate steps to defend this action and to defend the award of attorney's fees to which the Defendant is entitled upon dismissal for lack of subject matter jurisdiction under the Colorado Governmental Immunity Act ["CGIA"]. Plaintiff may not understand or agree with those actions, and she may not like the outcome, but it does not provide any valid basis for moving for sanctions.

6. Further, defense counsel has at all times communicated with Ms. Lynne in a professional manner, notwithstanding the increasing hostility that is evident in the Plaintiff's filings with the Court. Significantly, if an attorney had filed a motion such as this one – including making threats of disciplinary complaints against opposing counsel during the pendency of ongoing litigation -- that attorney herself would be subject to reprimand from the court and possible sanctions or discipline for violating the rules of professional conduct.

7. A trial court generally enjoys considerable discretion as to whether to impose sanctions and the sanctions to be imposed for violations of rules. *See, Camp Bird Colorado, Inc. v. Board of County Com'rs of County of Ouray*, 215 P.3d 1277, 1289 (Colo. App. 2009) (sanctions for discovery violations); *Pfants v. Kmart Corporation*, 85 P.3d 564, 567 (Colo. App. 2003) (sanctions for spoliation of evidence). However, as discussed above, there has not been any violation of any rule which would justify the imposition of sanctions here. Therefore, the Court would be exercising sound discretion to deny the relief requested by the Plaintiff here.

8. The Court should further find that the Plaintiff's motion lacks substantial justification. The Court has more than ample basis to find the Plaintiff's motion to be frivolous, groundless and vexatious in light of its tone, the Plaintiff's history of bringing such motions against opposing counsel and other attorneys, and her complete failure to cite a single rule, law or court order which has been violated here. Her motion has only served to unnecessarily expand the scope of these proceedings and cause the defense to incur additional attorney's fees responding to said motion.

WHEREFORE, Defendant Beals and his counsel respectfully request the Court enter an order as follows:

- 1) denying the Plaintiff's motion for sanctions;
- 2) sealing the Plaintiff's motion and any other filings and orders related thereto, so that her unsupported accusations are not of public record;
- 3) finding the Plaintiff's motion to be frivolous, groundless and vexatious, so as to justify a further award of attorney's fees to the defendant (to which he is already entitled for defense of this ongoing litigation following the proper dismissal of the Plaintiff's complaint); and
- 4) for whatever further relief the Court deems just and proper.

Respectfully submitted this 21<sup>ST</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 and the Fort Collins City Attorney's Office]*

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEALS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS** was filed via the Colorado Courts E-Filing System and served this 21<sup>ST</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/ Jody L. Minch

*[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC)*