

<p><b>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO</b> Larimer County Justice Center 201 LaPorte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 970-494-3500</p> <hr/> <p><b>Plaintiff:</b> STACY LYNNE,</p> <p>v.</p> <p><b>Defendant:</b> NOAH BEALS</p>	<p>DATE FILED: September 11, 2019 4:55 PM CASE NUMBER: 2018CV220</p> <hr/> <p><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p><b>Case Number:</b> 2018 CV 220</p> <p><b>Courtroom:</b> 3C</p>
<p align="center"><b>ORDER DENYING PLAINTIFF’S MOTION FOR DISQUALIFICATION OF DISTRICT COURT JUDGE STEPHEN J. JOUARD</b></p>	

THIS MATTER is before the Court on Plaintiff’s motion for disqualification of the undersigned judge in this matter. The Court has carefully considered the allegations set forth in Plaintiff’s motion and being fully informed in the premises, denies Plaintiff’s motion. The court finds and orders as follows:

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff filed her Complaint on December 4, 2018, asserting a claim for defamation against Defendant Beals. Defendant filed a motion to dismiss for lack of subject matter jurisdiction and a request for attorney’s fees on January 11, 2019. On April 3, 2019, the Court granted Defendant Beals’ motion to dismiss under C.R.C.P. Rule 12(b)(1) finding that Plaintiff had failed to sufficiently plead facts to support a finding that the Court had subject matter jurisdiction. Finding that Plaintiff failed to sufficiently plead her claim, the Court dismissed this matter, without prejudice.

Thereafter, Defendant sought to recover attorneys’ fees incurred in defense of the claim. Plaintiff objected to Defendant’s request for attorneys’ fees on May 1, 2019. Plaintiff objected to the Defendant’s request for attorneys’ fees on the basis that the Court erred in dismissing the Plaintiff’s claims and that the Court should defer any ruling on Defendant’s request for attorneys’ fees until after ruling on Plaintiff’s motion for post-trial relief under C.R.C.P. Rule 59.

The Court denied Plaintiff’s motion for post-trial relief on June 2, 2019 and thereafter set a hearing on Defendant’s request for attorneys’ fees in light of Plaintiff’s objection. A hearing was scheduled on Defendant’s request for attorneys’ fees on August 5, 2019. On July 31, 2019, defense counsel filed with the Court a notice of supplemental attorneys’ fees incurred by the

Defendant in responding to Plaintiff's motion for post-trial relief. On August 2, 2019, Plaintiff filed an emergency motion to delay the August 5, 2019 hearing on attorneys' fees. Plaintiff requested that the Court delay a hearing on the Defendant's motion for attorneys' fees and that the Court deny the Defendant's attorneys' fees due to the "repeated vexatious actions" of defense counsel. Plaintiff objected to being improperly served with a supplemental disclosure regarding claimed attorneys' fees by defense counsel. The Court granted Plaintiff's request to reschedule the hearing on Defendant's motion for attorneys' fees to allow Plaintiff additional time to prepare for such hearing.

On August 7, 2019, Plaintiff filed a motion for sanctions against defense counsel, Kimberly Schutt, Esq. as well as her firm, Wick & Trautwein, LLC. Defense counsel opposed the motion for sanctions arguing, in part, that Plaintiff failed to cite any rule or statute which would support the granting of sanctions against Ms. Schutt or the firm of Wick & Trautwein, LLC. On August 29, 2019, the Court denied Plaintiff's motion for sanctions finding that Plaintiff failed to establish a factual or legal basis to impose sanctions against defense counsel or her firm.

On September 6, 2019, Plaintiff filed the present motion requesting that the undersigned judge disqualify himself from this case. Plaintiff argues that her motion to disqualify is not based upon the Court's order to deny sanctions, but rather, based upon the inaccurate contents of the Court's August 29, 2019 Order. Plaintiff asserts that the contents of the Court's August 29, 2019 Order do not appear to be written impartially. Plaintiff goes on to wonder as to whether "Judge Jouard's uncharacteristic departure from the facts" was the result of his failure to read the motion, because he is overworked, on drugs, inebriated, or for other reasons.

### LEGAL STANDARD

A motion to disqualify is to be determined in accordance with C.R.C.P. Rule 97.<sup>1</sup> C.R.C.P. Rule 97 requires that the Court accept as true all factual statements in the motion and supporting affidavits and determine if the facts alleged are sufficient to support an inference that the judge is biased or prejudiced against a party. *Bruce v. Colorado Springs*, 252 P.3d 30, 36 (Colo. App. 2010). Additionally, the Court must accept the facts presented in the affidavit as true, even if it believes them to be false. *Johnson v. District Court*, 674 P.2d 952, 955-56 (Colo. 1984). However, the motion and supporting affidavits are insufficient if they are based only on "suspicion, surmise, speculation, rationalization, conjecture, innuendo" or mere conclusory statements of bias. *Carr v. Barnes*, 580 P.2d 803, 805 (Colo. 1978) (quoting *Walker v. People*, 248 P.2d 287, 295 (Colo. 1952)). Conclusory statements that a judge is biased do not establish a reasonable basis for disqualification. *In re Marriage of Elmer*, 936 P.2d 617, 619 (Colo. App. 1997). Finally, an adverse ruling on a legal issue does not require disqualification absent facts in the motion or affidavits from which it may reasonably be inferred that the judge is biased or prejudiced or has a "bent of mind." *Goebel v. Benton*, 830 P.2d 995, 1000 (Colo. 1992).

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<sup>1</sup> Plaintiff, appearing *pro se*, fails to reference the specific rule in support of her motion. Further, although the rule requires that a motion for disqualification "shall be supported by affidavit," Plaintiff has failed to provide a supporting affidavit. The Court does not, however, find that the absence of a supporting affidavit should result in dismissal of the motion insofar as Plaintiff has asserted specific facts in support of her request.

## DISCUSSION

Plaintiff asserts in her motion for disqualification that she is not seeking to disqualify the undersigned as a result of the decision to deny her motion for sanctions, but rather, seeks disqualification based upon the inaccurate statements contained in the Court's order denying the motion for sanctions. Plaintiff argues that the inaccurate statements in the Order, look and feel like bias.

Plaintiff first argues that the Court's Order was in error in stating that Plaintiff filed her emergency motion in response to Defendant's notice of supplemental attorneys' fees. Plaintiff argues that she did not file her emergency motion in response to Defendant's notice of supplemental attorney's fees, but filed it because Plaintiff was not provided with proper notice of the supplemental information. Plaintiff suggests that the Court left out key information as to Plaintiff's intent in filing the emergency motion which reflects bias.

Plaintiff further argues that the Court was in error in finding that Plaintiff failed to cite any rule or statute which would support the granting of sanctions. Plaintiff argues that she included three pages of citations to the Colorado Rules of Professional Conduct quoting verbatim from those rules to support her request for sanctions.

Finally, Plaintiff argues that the Court's Order suggesting that Plaintiff's motion contained a long and rambling discourse asserting facts that have no relevance to a claim for sanctions in this case, was in error and demonstrates the Court's bias.

The Court has carefully considered the arguments advanced by Plaintiff that the Court's Order of August 29, 2019 reflects bias and prejudice against Plaintiff which requires disqualification under C.R.C.P. Rule 97. The Court disagrees. The Court's Order is accurate in stating that Plaintiff filed her emergency motion in response to Plaintiff's notice of supplemental attorneys' fees. This statement was not intended to be a characterization of Plaintiff's intent, but rather, a simple statement of fact.

The Court has also considered Plaintiff's argument that the Court's Order indicating that Plaintiff failed to cite any rule or statute to support the granting of sanctions reflects bias. The Court has reviewed Plaintiff's motion and believes that the Court's statement and conclusion is completely accurate. While Plaintiff's motion does, in fact, reference the Colorado Rules of Professional Conduct which provide specific rules governing attorney conduct, such rules do not provide a basis for imposition of sanctions in a civil case. Plaintiff does not cite or refer to any applicable statute or applicable rule of civil procedure which guide a court's determination regarding the imposition of sanctions. *See, e.g.*, C.R.C.P. Rule 11 and Rule 37.

Finally, the Court has considered its reference characterizing Plaintiff's motion as containing a long and rambling discourse and including facts that are not relevant to a claim for sanctions in this matter. The Court believes that the Order reflects a fair and appropriate characterization of the motion.

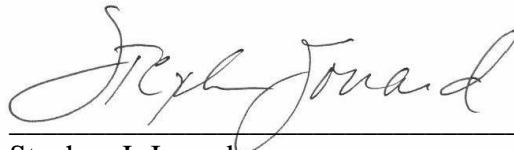
As noted above, conclusory statements that a judge is biased do not establish a reasonable basis for disqualification. *Elmer*, 936 P.2d at 619. Further, a motion to disqualify is insufficient if it is based on suspicion, surmise, speculation, rationalization, conjecture, innuendo or mere conclusory statements of bias. *Carr*, 580 P.2d at 805. Plaintiff's motion is based not on facts borne out by a review of the applicable pleadings, but rather, based on suspicion, surmise, speculation and innuendo. Accordingly, the Court denies Plaintiff's motion for disqualification.

**ORDER**

Based upon the findings set forth above, the Court denies Plaintiff's motion for disqualification.

SO ORDERED: September 11, 2019.

BY THE COURT:



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Stephen J. Jouard  
District Court Judge