

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: October 30, 2019 CASE NUMBER: 2018CV149  <b>▲ COURT USE ONLY ▲</b>
<b>Plaintiff:</b> Eric Sutherland  v.  <b>Defendants:</b> The City of Fort Collins, et al.	
<b>ORDER DENYING PLAINTIFF'S MOTION FOR DISQUALIFICATION</b>	

The Plaintiff filed his Motion for Disqualification Under Rule 97 on October 1, 2019. The Defendants have not responded. Having considered the Motion and applicable law, the Court finds and orders as follows:

The Plaintiff asserts that the undersigned should be disqualified from this case. "When assessing the grounds for disqualification raised in a motion, the judge must consider the Code of Judicial Conduct as well as the statutes and procedural rules." *Zolline v. Telluride Lodge Ass'n*, 732 P.2d 635, 639 (Colo. 1987). There are three such sources of authority under Colorado law: C.R.C.P. 97, C.R.S. § 13-1-122, and Rule 2.11 of the Colorado Code of Judicial Conduct.

The situations described in C.R.S. § 13-1-122 are not relevant to the instant motion, but the rules of civil procedure and judicial conduct are. C.R.C.P. 97 says "[a] judge shall be disqualified in an action in which he is interested or prejudiced[.]" Further, C.J.C. 2.11(A)(1) provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including ... [t]he judge has a personal bias or prejudice concerning a party or a party's lawyer[.]"

The Plaintiff alleges that the undersigned must recuse himself for three reasons: (1) he is prejudiced as evidenced by his systematic disregard for the Plaintiff's argument and authorities, (2) he is prejudiced as evidenced by factual conclusions demonstrating

“bent of mind,” and (3) he is interested in the outcome of a related *coram non judice* issue.

As for the first reason, the Plaintiff claims the undersigned “has systematically disregarded” his novel theory of standing and that this disregard “is evidence of unacceptable bias and prejudice sufficient to require disqualification.” That the undersigned has consistently found the Plaintiff’s novel theory of standing to be unsupported by law is neither evidence of bias nor evidence of prejudice.

As for the second reason, the Plaintiff claims that, when in the Court’s September 5, 2018 Order the undersigned wrote “The Court finds that Plaintiff’s suit against Fort Collins was brought for the purpose of delaying and/or harassing the City in its attempt to construct the voter-approved broadband network[,]” this statement “evidences a ‘bent of mind’ that can clearly be seen to clear the bar necessary for disqualification.” A review of the record, however, reveals that this statement was not made in the September 5, 2018 Order but was instead made in the April 2, 2019 Order Granting Fort Collins’s Motion for Attorneys’ Fees and Bill of Costs. Rather than demonstrating prejudice, the undersigned’s statement was a finding necessary to the resolution of the City’s request for attorneys’ fees under C.R.S. § 13-17-103 and was made after a hearing during which the Plaintiff testified.

As for the final reason, the Plaintiff claims the undersigned should be disqualified because “[t]here can be no question that Judge Lammons is interested in the outcome” of issues the Plaintiff raised in his May 2, 2019 Motion to Deem this Proceeding *coram non judice* Since June 23, 2018 Pursuant to Rule 60(b)(5). As the undersigned described in the May 29, 2019 Status Order Regarding Notice of Appeal, the Court lacks jurisdiction to consider the Plaintiff’s *coram non judice* motion and will not consider it unless directed to do so by the Colorado Court of Appeals. As the Colorado Supreme Court has long held, “[t]he interest of a judge upon which he may disqualify himself must necessarily relate to the subject matter of the litigation, or be of a pecuniary interest in the outcome of the litigation, and not as it might relate to a determination of the facts and legal questions presented.” *Kubat v. Kubat*, 238 P.2d 897, 899 (Colo. 1951). The undersigned is not “interested” in the *coram non judice* issue as that term is used in C.R.C.P. 97.

Taking the factual allegations advanced by the Plaintiff as true, the undersigned concludes that would be inappropriate to recuse. The undersigned is neither interested nor prejudiced in this action. Further, the undersigned does not possess a personal bias or prejudice regarding any of the parties or any of the attorneys in this case. “[A]bsent a

proper reason for recusal, a judge has an obligation to serve on a case assigned to him.” *People v. Brewster*, 240 P.3d 291, 301 (Colo. App. 2009). *See also* C.J.C. 2.7 (“A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.”).

The Plaintiff’s Motion is denied.

Dated: October 30, 2019.

BY THE COURT:



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Gregory M. Lammons  
District Court Judge