

## Loehr, Rosemary Ann

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**From:** Eric Sutherland <sutherix@yahoo.com>  
**Sent:** Monday, November 18, 2019 9:55 PM  
**To:** Loehr, Rosemary Ann; Mill, John W.; John Duval  
**Subject:** Re: FTC/Sutherland: Rescheduling 11/27 Hearing

DATE FILED: November 21, 2019 9:36 AM  
FILING ID: 53F7D0B1E3FA9  
CASE NUMBER: 2018CV149

Ms. Loehr,

I do not believe that a *Notice of Hearing* filed while all proceedings in the case were suspended is valid. Therefor, I do not believe that a continuance is the right approach here. One may not continue a hearing that was not set.

Had it been appropriate on the occasion of the teleconference to make note of important family commitments made for the Thanksgiving holiday, I would have done so. As you know, all proceedings had been suspended at that time and I participated in that teleconference exclusively for the purposes of ensuring that the City and the Clerk understood the Rule.

I am also reluctant to agree to anything unless and until reasonable ground rules are established in regard to the request for attorneys fees associated with the March hearing on attorneys fees. A hearing on attorneys fees is a right. You have not been clear on why you think fees for the hearing should be awarded, but, presumably, you believe I had no right to request the hearing because it was frivolous. I requested the hearing primarily for the purposes of establishing that a new theory of law was brought in good faith with every expectation that it should prevail. The City did not even acknowledge this issue, let alone address it. A claim for attorney fees on a matter in which there is conflicting authority and which is concededly an issue of first impression is itself suspect as frivolous.

Now, I do not expect Judge Lammons to revisit the legitimacy of the new theory of law because he has already ruled on that. He stated that it was not persuasive. He never ruled it was frivolous as you claimed. However, I am entitled to a showing that the request for a hearing on the first motion for fees was brought in good faith with the expectation that the court would correctly apply 13-17-107(2). Thus, I placed this issue on my list of issues to be considered at the second hearing. An order denying any opportunity to make a showing that the occasion of the first hearing does not entitle the city to an award of attorneys fees for the first hearing impermissably ties my hands behind my back.

You have not broken down the fees requested as to any of component activities you complain of. That presents a problem. This means an all-or-none award because if even one element complained of is deemed to not merit an award of fees, (such as the first hearing), there can be no way of determining what the award should be.

I also do not believe that a trial court may impose an injunction simply because the parties stipulate to the injunction. (Doesn't mean Greg Lammons wouldn't do it, just means he shouldn't do it.) That would be an abuse of a court's jurisdiction. A court does not have jurisdiction over an issue just because the parties have stipulated that it does.

I urge the City to, at a minimum, file a Response to the motion presently before the court conceding that the Notice of Hearing was improperly filed into a case where all proceedings had been suspended.

Eric Sutherland

PS the Fort Collins broadband debacle appears to have entered a premature meltdown phase. I could be wrong. City officials are being suspiciously surly and tight lipped. However, the public revelation that the long promised replacement of the city's clunky and deficient Customer Management System platform with something new and better is way, way off course has to be seen in the light of much other information that all indicates that the project has lost its way.

You might recall Mike Beckstead explaining to the court that secret sauce that was going to give Connexion a big lift was customer service. Hard to do with the clunky and deficient customer service management platform that the city said it was going to replace long before Connexion came on line because it was not capable of handling another utility.

On Monday, November 18, 2019, 06:57:53 PM MST, Loehr, Rosemary Ann <rloehr@shermanhoward.com> wrote:

Mr. Sutherland:

You have represented to the court that you cannot attend the hearing set for November 27, 2019. Given your unavailability for November 27, are you available to reschedule the hearing on December 13, 2019 at 1:30 p.m.?

Please let me know if you are available. If you are available on December 13, the City will reserve that date with Court by filing an Unopposed Motion for a Continuance.

Thanks,

Rosemary

**Rosemary A. Loehr** - Associate

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**From:** Eric Sutherland [mailto:sutherix@yahoo.com]  
**Sent:** Friday, November 15, 2019 4:22 PM  
**To:** Loehr, Rosemary Ann <RLoehr@shermanhoward.com>  
**Cc:** Mill, John W. <JMILL@shermanhoward.com>  
**Subject:** Re: FTC/Sutherland: Rescheduling 11/27 Hearing

Ms. Loehr,

I will continue to abide by the Rules even if the City of Fort Collins does not. Please see my Nov. 6th Motion to Strike.

You may be interested to know that the City continues to disregard the City Code and City Charter even though it has, through pleadings signed by attorneys of Sherman and Howard, described the practice of holding Electric Utility Enterprise Board meetings separately from regular Council meetings as inconsistent with the City's own laws. (The City has arguedz that non-compliance is the same as substantial compliance. Whether or not that is true, strict compliance is required for all requirements of a Home Rule Charter.

If the City insists on violating its own laws, making false statements in signed pleadings and disregarding the Rules of Civil Procedure, confusion and extended litigation at taxpayer expense will be the result.

The Broadband debacle appears to be going down the tubes. The city was unable to bring its customer service management platform online prior to the launch of Connexion. I can't even get information about what fees and taxes are being added to customers bills ... and it appears that no customer is getting billed at this time.

The City's position on my request for declaratory relief is absurd and impractical.

Eric Sutherland

On Thursday, November 14, 2019, 02:20:13 PM MST, Loehr, Rosemary Ann <[rloehr@shermanhoward.com](mailto:rloehr@shermanhoward.com)> wrote:

Mr. Sutherland:

The City is willing to reschedule the 11/27 hearing in light of your unavailability.

The court can reschedule the hearing for 12/13 at 1:30 p.m.

Are you available this date? If so, the City will file a continuance and request that the hearing be reset for December 13, 2019 at 1:30 p.m.

Please let us know as soon as possible so that we can reserve this date.

Thanks,

Rosemary

**Rosemary A. Loehr** - *Associate*

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