

**8<sup>th</sup> DISTRICT COURT  
LARIMER COUNTY JUSTICE CENTER**

Court Address: 201 Laporte Avenue  
Fort Collins, CO 80521  
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DATE FILED: 2019 MAY -6 PM 3:01  
FILED IN COMBINED COURT  
LARIMER COUNTY CO  
FILING ID: D7623EDS1BMBR: 2018CV149  
CASE NUMBER: 2018CV149

**Plaintiff:** Eric Sutherland, *pro se*

v.

**Defendants :** THE CITY OF FORT COLLINS, a home rule municipality in the state of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors to this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office;

And

Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.

▲ COURT USE ONLY ▲

**Party without attorney:**

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Case #: 2018CV149  
Division: 3C

**UNOPPOSED MOTION TO WITHDRAW MOTION FOR AMENDMENT OF JUDGMENT  
GRANTING CITY OF FORT COLLINS' MOTION FOR ATTORNEYS' FEES AND BILL OF COSTS  
PURSUANT TO C.R.C.P. RULE 59**

Plaintiff, Eric Sutherland (also referred to hear with 1<sup>st</sup> person pronouns) hereby files this Motion seeking the withdrawal of his *Motion for Amendment of Judgment* filed in this court on April 16, 2019.

**Certification of conference:** The undersigned hereby certifies he conferred with opposing counsel on this motion. Counsel for the City of Fort Collins has stated that the relief requested in this *Motion* is unopposed.

**EXHIBIT  
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## **I. BACKGROUND**

On April 2<sup>nd</sup>, 2019 this court decided the City of Fort Collins motion for attorneys fees and costs in the City's favor.

On April 16<sup>th</sup>, 2019, Plaintiff filed his *Motion for Amendment of Judgment Granting City of Fort Collins' Motion for Attorneys' Fees and Bill of Costs Pursuant to C.R.C.P. Rule 59*.

On May 3<sup>rd</sup>, 2019, Plaintiff filed his *Second Notice of Appeal* with the Colorado Court of Appeals commencing case no. 2019CA800.

## **II. BASIS FOR REQUEST FOR WITHDRAWAL**

The April 16<sup>th</sup> *Motion for Amendment of Judgment* was likely prepared and filed with an incorrect understanding of the law controlling review of awards of attorneys fees. A Rule 59 motion addressing an award of attorneys fees is only proper when the award is granted as part of a final judgment in a civil case. In other circumstances where attorneys fees are requested by motion after final judgment, Rule 59 does not operate to provide post-judgment relief. This case clearly falls within this second scenario. As a direct consequence, a motion filed to challenge an award of attorneys fees does not toll the time for taking an appeal as would a timely filed Rule 59 motion. *See Goodwin v. Homeland Cent. Ins. Co.*, 172 P. 3d 938 – Colo. Appeals 2007

The understanding of law described in the previous paragraph, may also be incorrect. The case law on this topic is not the clearest. Regardless, this case is now on appeal. No party is prejudiced by granting this motion.

Because the issues addressed in the *Motion for Amendment of Judgment* dealt only with attorneys fees, this court retains jurisdiction over this subject despite the filing of a *Notice of Appeal* and the transfer of jurisdiction of all other matters to the Court of Appeals. *See Baldwin v. Bright Mortgage Co.*, 757 P.2d 1072, 1073-74 (Colo. 1988) and also this court's *Order Granting the City of Fort Collins' Motion for Reconsideration of* issued December 7<sup>th</sup>, 2019.

## **III. ARGUMENT IN THE MOTION FOR AMENDMENT OF JUDGMENT IS STILL RELEVANT AND SHOULD BE REVIEWED BY THIS COURT.**

As stated in the *Motion for Amendment of Judgment*, this court's adjudication of this matter has been beyond the pale.

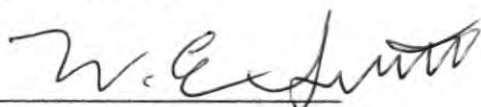
First, this court refused to consider a novel theory of law that had been sufficiently argued to hold for standing in any circumstances where a petitioner would be barred from taking any

action in the future by a non-claim statute. This court wrote: “*This Court follows settled standing law requiring that an injury be direct and palpable to sustain a claim.*” Of course, this rigidity is an abuse of discretion in and of itself. Trial courts are obliged to consider new theories of law. This court’s refusal to entertain a new theory of law and, instead, rigidly apply only settled law, was improper.

Second, this court found Plaintiffs claims to be substantially frivolous without even acknowledging the argument and authority that Plaintiff had relied upon when bringing the claims. Plaintiff had reasoned that either a potential petitioner has no First Amendment rights or a cause of action brought in advance of the time bar of a non-claim statute may rely upon the established precedent that the Uniform Declaratory Judgment Act, C.R.S. §13-51-101 *et seq* is to be liberally construed to determine the rights of parties. In order for this court to have actually found that Plaintiffs’ claims were substantially frivolous, this court would have had to first engage with the new legal theory presented and 2) found that this new legal theory lacked sufficient justification even though Defendant City of Fort Collins had chosen not to make this argument. This court did neither.

## **VI. CONCLUSION**

Because the issue of this court’s award of attorneys fees is now on appeal and because this court still retains jurisdiction over issues associated exclusively with attorneys fees, this court can and should grant this motion to withdraw the *Motion fo Amendment of Judgment* filed on April 16<sup>th</sup>, 2019.

  
Eric Sutherland

Dated May 6th, 2019

I hereby certify that on this 6th Day of May, 2019, a true and correct copy of the foregoing *UNOPPOSED Motion to Withdraw Motion for Amendment of Judgment Granting City of Fort Collins' Motion for Attorneys' Fees and Bill of Costs Pursuant to C.R.C.P. Rule 59* was filed with the Court. Also, a true and correct copy of the foregoing will be served via email to the following no later than May 6<sup>th</sup>, 2019.

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