

## Loehr, Rosemary Ann

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**From:** Eric Sutherland <sutherix@yahoo.com>  
**Sent:** Sunday, April 14, 2019 5:52 PM  
**To:** Mill, John W.; Loehr, Rosemary Ann, John Duval  
**Subject:** Rule 59 Motion : award of fees.

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Judge Lammons appears to be saying "Sutherland is so stupid that even though he knew he did not have standing or even a ghost of a chance at attaining standing threw some alternative means, he filed anyway. After all, he admits to knowing he had not sustained injury."

It is interesting to be thought of in this way.

But then there is the other side. Judge Lammons propensity to completely ignore argument is as noteworthy as his ability to make findings of fact that are completely unsupported by evidence or testimony.. It makes the appeal much, much easier when this happens. It is much easier to say, "the court completely disregarded the argument" rather than having to say "the court considered the argument and got it wrong." Fortunately, the COA can hear and decide the jurisdiction issue *de novo*.

Judge Lammons wrote: "*Plaintiff never sought declaratory judgment to reconcile the nonclaim statute with Colorado standing law.*" Of course, no authority was cited (or exists) that holds that a theory of law regarding a court's jurisdiction to hear a case must be pleaded in the complaint. The legal authority that does control here should be familiar.

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. *Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508 (Colo.1986).

I argued that the non-claim statute must be interpreted to create a private cause of action. That argument was promptly presented in my Response to the City's MTD with supporting authority. The City of Fort Collins never argued differently in its Reply. The argument was repeated in my Response to the City's motion for fees. Only then did the City address the basis of my claim to standing, but like Judge Lammons, the City failed to acknowledge, let alone address, the crux of the basis of my legal theory.

Judge Lammons' implied understanding of law ... a theory of law regarding standing must be pleaded as a request for declaratory judgment ... is an interesting concept. However, no one would ever have standing to request declaratory judgment. Such a request would amount to a request for an advisory opinion on whether or not a potential plaintiff has standing. The courts do not entertain such requests. A party has no other choice but to file and assert the theory when it is appropriate ... just as I did in my Response to a MTD.

Because the City of Fort Collins never argued differently, this now goes to the Court of Appeals without any argument in opposition preserved for appeal. Not even oral argument at the hearing.

(7) No attorney or party shall be assessed attorney fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Colorado.

I think I testified under oath that I filed in advance of the 30 day non-claim statute with full knowledge that no injury had accrued, but waiting longer would absolutely mean I was barred. Only an idiot would have filed when I did if not for the non-claim statute.

**EXHIBIT**  
**R**

So ... I am just betting that Judge Lammons will respond to a motion for reconsideration with the same disregard for the arguments I have presented as he has consistently done in the past. When he does this, it will further document a systematic disregard of every single argument I advanced to obtain standing. That systematic disregard is placed front and center in other filings into the justice system.

Even though there is a chance that the City will actually preserve some argument in refutation in its Response, filing a Motion for Reconsideration still seems like a good idea. I can't imagine any arguments in refutation. If there were any, they would have been entered. But even if there are some, I can't imagine that they completely defeat a citizens constitutional right to petition government for redress of grievances and right to due process.

People need to be able to go into court with an understanding that their arguments will at least be acknowledged. Without Barber v. Ritter, I never would have filed. Without 13-17-102(7), I never would have filed.

When judges systematically disregard 1) a citizen's arguments and 2) the authorities that a citizen cites to support his arguments, the courts become something other than what they were intended to be.

Please provide your client's position on a Rule 59 motion made for the purposes of seeing if Judge Lammons may be persuaded to actually acknowledge arguments and authority.

Eric Sutherland