

Plaintiffs come before this court to make our simple request to be heard, as is our right. The frivolous nonsense Defendants are presenting in their Motion for Summary Judgment is merely prolonging this case, is racking up attorney fees for Defendant and Counsel Starr, ignores the evidence presented, and is an attempt to deny Plaintiffs their day in court.

Plaintiffs can add no new evidence to this case as it all is being cast aside by Defendants, and distractions and smoke and mirrors are in the place of due process of law. Defendant's counsel, Defendant Starr, knew or should have known to not try to distract the court from the substance of the complaint, and shine a distracting light on form,⁽¹⁾ which can be put out of view.

Defendants are clearly ignoring the foundational issue in this case... that of the People's Constitutional rights as expressed in the Colorado Constitution, as well as secured through multiple Colorado Statutes. No response has been provided on these, and the relevant arguments clearly expressed in previous pleadings. It is obvious Defendants are denying the People of Archuleta County their rights to be heard.

Many of Defendant's claims in their most recent attempt to address our complaint is empty semantics. The documents plainly show at least one County Commissioner was engaged with Plaintiffs in scheduling a second Work Session, since the first was obviously made null. It is doubtful that Commissioner Whiting (not the chair at the time) would have unilaterally come up with the criteria as laid out in the email he responded to about our work session request.

This ongoing correspondence was clearly within the two year statute of limitations, nullifying Defendant's argument. In any case, the statute of limitations does not begin until the injury was understood, became evident and was

¹ *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd 240; *Pucket v. Cox*, 456 2nd 233; Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.

acknowledged by Plaintiffs as permanent since no dialog was forthcoming which presented potential hope of correcting the controversy and being heard. Since dialog was ongoing and hope of reasoning the issue out existed at least till February 5, 2015, the suit lies well within two years of that date.

Plaintiffs assumed they would be presenting testimony in a court of law on this issue, which testimony is certainly equal to, and essentially a higher level of evidence. If Affidavits are “technically” required for this case to proceed, the court can so ORDER and Plaintiffs will comply.

OBJECTION TO COUNSEL BY STARR/ROSE WALKER AND STARR

Plaintiffs wish to reiterate their original objection to Starr being counsel in this instant case, for cause. Defendant Starr, through the law firm “Rose, Walker & Starr” he is working for and being paid through, as a Defendant, is representing the other parties also. A party in a lawsuit is clearly a witness⁽²⁾ in the case, and certainly Starr is a witness in this case, being the attorney for the County of Archuleta, and the original principal in stopping Plaintiff’s ballot initiatives from progressing. The Professional Rules of Conduct prohibit an attorney to act as witness and counsel in the same matter.⁽³⁾

Generally the courts in this country have stated that it is improper for an

² DR 5-101(A); -Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.“ See also “[T]he role of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively. The lawyer-witness may be more easily impeached as a witness when he also serves as counsel to the party for whom he testifies. Because of this conflict... no attorney shall be permitted to take part in the conduct of a trial in which he has been or intends to be a witness for his client...” The Ethical Considerations of the Code of Professional Responsibility, **EC 5-9**.

³ “DR 5-102(A); -If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue the representation in the trial...”

attorney to appear in a trial both as a witness and as an advocate for his client.⁽⁴⁾ Judicial canon requires judges to enforce rules of professional conduct. U.S. Supreme Court decisions also state attorneys are not allowed to testify. (Cites omitted).

Starr is being paid to represent the other named parties, and himself, paid by the county taxpayers (including Plaintiffs) and which Plaintiffs object to on those grounds alone. Plaintiffs believe Starr, and Rose, Walker & Starr law firm to be disqualified as defense because even if someone other than Starr, in Rose, Walker & Starr, defends in this case, Starr is still receiving remuneration while a Defendant, presumably being paid by the County taxpayers through Rose, Walker & Starr, and this is still unethical and a conflict of interest.

Starr's own testimony stated that the attorney fees have allegedly reached \$75,000, which clearly is an egregious amount, and clear evidence of a major conflict of interest for Starr, and Rose, Walker & Starr. Starr's frivolous attempt at delay in filing to have the case moved to Federal Jurisdiction, as was stated in previous pleadings, was obviously something that is included in the \$75,000 fees being claimed. Plaintiffs contest this conflict of interest by Starr.

Certainly Starr knew or should have known the ethic rules, but apparently does not care. Starr was under investigation (along with other named defendants in this instant case) by the Colorado Ethics Commission, and the Colorado Attorney General's office, for alleged unlawful participation in the very county attorney position Starr is being paid for, yet in this case, he and other named Defendants also under investigation hired an independent law firm to represent them, unlike in this case, which also raises questions beyond ethics.

Any reasonably minded person would see that this is a conflict of interest and the fact that it has gone on for this long is evidence of willful and wanton disregard

⁴ *Hubbard v. Hubbard*, 233 So. 2d 150 (Fla. Di. t. Ct. App. 1970); *Ferraro v. Taylor*, 197 Minn. 5, 265 N. W. 829 (1936); *Garret t v. Garrett*, 86 N.J. Eq. 293, 98 A. 848 (1916); *Town of Mebane v. Iowa Mut. Ins. Co.*, 28 N. C. App. 27, 220 S. E. 2d 623 (1975).

for ethics and canon by Defendants. Plaintiffs intend to present this entire escapade in written form to every resident of Archuleta County to reveal the antics taking place in their county government, and how their money and their rights are being abused.

Conclusion

Plaintiffs move the court to first remove Defendant Starr and Rose, Walker and Starr, from any representation in this case, and to refund to the Archuleta County Taxpayers every penny received (\$75,000???) by Starr and firm.

Second, to reprimand and sanction Starr and Rose, Walker and Starr law firm for its seemingly cabal approach to small government in Archuleta County and violations of ethics and simple morality.

Third, Plaintiffs have presented an abundance of evidence in the record to clearly raise significant questions and challenges to the presumptions and conclusions of Defendants to support Plaintiff's denial of Summary Judgment which is merely a means to cheat Plaintiffs out of proper due process of law and being heard on all elements. Such evidence can't be ignored if justice is to be had.

Plaintiffs move this court to deny the Motion for Summary Judgment by Defendants based on insufficient evidence and lack of rebuttal, and moves the court to grant Plaintiffs Summary Judgment against Defendants, and judgment for damages and relief as previously pleaded, or as this court deems just and fair, or

To schedule our court hearing to discuss ALL of the evidence, instead of nitpicking at fringe issues and stalling the rights due to Plaintiffs and all Archuleta County Residents. Frankly, Plaintiffs are embarrassed by Defendant's actions and unprofessional conduct.

Respectfully submitted,

Greg Giehl, for Plaintiffs