State of Colorado
Office of the Secretary of State

Case Number: 2023 AHO 0003

IN THE MATTER OF COLIN LARSON AND COLIN FOR COLORADO

EXCEPTIONS

Respondents Colin Larson and Colin for Colorado, through the undersigned counsel, hereby submit the following exceptions to the Procedural Oder regarding AHO's Order denying Motion for Attorney Fees dated and served June 24th, 2024.

The nonpartisan Elections Division initially filed a motion to dismiss this matter. That motion was denied by the Deputy Secretary and final decision makers. Now, having prevailed on the merits, respondents are back before the Deputy Secretary and final decision makers requesting they find their prior decision ordering the Division to file the case, and the Division's filing, lacked substantial justification.

The hearing officer erred in finding the Election Division had substantial justification. In support of this conclusion the hearing officer relied upon irrelevant procedural matters that occurred after the filing of the complaint and erred in finding that a mere "plausible set of facts" unsupported by any evidence meets the burden of a "substantial justification".

In the Order, the hearing officer admits he placed great weight on post-election activities as a basis for his finding of substantial justification, "The appearance of coordination was greatly enhanced by the fact that Respondent's counsel coordinated discovery responses of four respondents." *See In Re Larson et al, Order Denying Motion for Attorney Fees ("Order"),* § 20. He then concludes, with no evidence, "She [attorney Taheri] did not allow her clients to answer the Division's discovery choosing instead to answer it herself." *Id.* Evidence of coordination after an election has occurred is not relevant. There was no evidence offered that counsel was a common consultant prior to the election. The fact that common parties to a specious complaint may want to share counsel to save on costs is a matter between counsel and the clients. This type of attempted interference in the attorney-client relationship is improper, as is the speculating about what communications occurred between an attorney and client.

The hearing officer additionally found, "[T]hat discovery responses are orchestrated by counsel filtered through her knowledge of the FCPA, is the very metaphor for the coordination at the center of the Division's claims." *Order, § 23.* Again, this has no relevance and appears to be another attempt to interfere with the attorney-client relationship by implying it is improper for attorneys to assist in discovery.

The hearing officer equates "plausible set of facts" with "substantial justification". *Order* § 28. This is a misapplication of the law.

C.R.S. § 1-45-111.5(2) provides in part:

> A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article 45 is entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the hearing officer that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was commenced for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including abuses of discovery procedures available under the Colorado rules of civil procedure.

"Lacked substantial justification" is defined as substantially frivolous, substantially groundless or substantially vexatious. *Id.*

"Frivolous" is defined as a claim where the proponent can present no rational argument based on the evidence or law in support of the claim. *Merrill Chadwick Co. V. October Oil Co.,* 725 P.2d 17 (Colo.App.1986). "Groundless" is defined as a claim where the allegations of the complaint, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence at trial. *Id.* "Vexatious" is defined as a claim brought or maintained in bad bath to annoy or harass. *Mitchell v. Ryder,* 104 P. 3d 316 (Colo.App.2004).

The complaint was clearly groundless. As argued in the original motion and confessed in the Division's response, the Division never had anything more than an "inference". An inference that was then rebutted by evidence the Division received prior to the hearing. Maintaining an action under these circumstances fits squarely within the definitions of groundless. There was no credible evidence offered in the Division's case necessary to file a complaint in good faith and certainly nothing to justify maintaining the proceedings after exculpatory material was provided in discovery.

The majority of the hearing officer's opinion focuses upon purported coordination efforts of a witness Daniel Cole, who was not a party to this action. *Order, § 16,17,18,19, 21, 24, 26.* The hearing office finds it "odd and out of character" that Cole was not able to remember details surrounding this case. *Id., § 17.* First, this case was brought over a year after the filing. This delay was fully attributable to the Division. Moreover, Cole was a witness called by the Division. If the Division failed to prepare his testimony, that should not be held against Larson.

Ultimately, the hearing officer concludes there was circumstantial evidence buttressed by motivation and opportunity:

> The desire to win, to regain control or to hold a part majority that can control the General Assembly. There are conduits: sophisticated, experienced, knowledgeable "common consultants" moving between entities whose boundaries and management are porous. There is opportunity: meetings, fundraisers, discussions of polling, media buzz and issues, cooperative management, friendships. And there is a lot of money flowing through the

entities and being placed in support of campaign committees to accomplish shared goals. *Order, §27.*

This description could be said of any election cycle and does not provide substantial justification.

Wherefore, Respondents request the Deputy and final decision makers set aside the hearing officer's decision and order attorney's fees and costs.

Dated this 23rd day of July

/s/ Suzanne Taheri
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CERTIFICATE OF SERVICE

I hereby certify that this Motion for Attorney Fees dated this 23rd day of July 2024, was served via email to:
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/s/ Suzanne Taheri
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Duly signed original on file at West Group