

EXHIBIT A

INDEX TO WELD COUNTY DISTRICT COURT PLEADINGS

CASE CAPTION: McMechan v. Town of Nunn, et al.

COURT: Weld County District Court

CASE NO: 2010CV219

No.	Pleadings	Filed By	Date
1.	Civil Case Cover Sheet	Plaintiff	3/6/10
2.	Complaint	Plaintiff	3/6/10
3.	Initial CMO Entered	Court	3/23/10
4.	Amended Complaint	Plaintiff	4/2/10
5.	Affidavits of Service on Defendants Town of Nunn, the Board of Trustees of the Town of Nunn and Jenny Johnson on April 7, 2010 of Summons, Civil Cover Sheet and Amended Complaint	Plaintiff	4/9/10
6.	Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading	Defendants	4/26/10
7.	Proposed Order RE: Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading	Defendants	4/26/10
8.	Order RE: Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading Entered	Court	4/27/10
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District Court, Weld County, Colorado PO Box 2038 Greeley, CO 80632		FILED Document – District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Mar 6 2010 5:45PM MST Filing ID: 29918786	COURT USE ONLY ▲
Plaintiff(s): TORI MCMECHAN, v. Defendant(s): TOWN OF NUNN and BOARD OF TRUSTEES OF THE TOWN OF NUNN			
Attorney or Party Without Attorney (Name and Address): Mark Cohen THE COHEN LAW GROUP A Professional Corporation 110 Snyder Street, 2 nd Floor PO Box 617, Nederland, CO 80466 Phone Number: 303 258 0561 E-mail: mark@cohenslaw.com Atty. Reg. #: 13178		Case Number:	Division Courtroom
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT			

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases.

2. Check the boxes applicable to this case.

Simplified Procedure under C.R.C.P. 16.1 **applies** to this case because this party does not seek a monetary judgment in excess of \$100,000.00 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.

Simplified Procedure under C.R.C.P. 16.1, **does not apply** to this case because (check one box below identifying why 16.1 does not apply):

This is a class action or forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, or

This party is seeking a monetary judgment for more than \$100,000.00 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs (see C.R.C.P. 16.1(c)), or

Another party has previously stated in its cover sheet that C.R.C.P. 16.1 does not apply to this case.

3. This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: March 6, 2010

S/ Mark Cohen
Signature of Party or Attorney for Party

NOTICE	
✓	This cover sheet must be filed in all District Court Civil (CV) Cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.
✓	This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.
✓	This cover sheet shall not be considered a pleading for purposes of C.R.C.P. 11.

<p>DISTRICT COURT, WELD COUNTY, COLORADO P.O. Box 2038 Greeley, Colorado 80632</p> <hr/> <p>Plaintiff(s): Tori McMechan</p> <p>Defendant(s): Town of Nunn and Board of Trustees of the Town of Nunn</p> <hr/> <p>Attorney for Plaintiff Mark Cohen The Cohen Law Group A Professional Corporation 110 Snyder Street, 2nd Floor PO Box 617 Nederland, CO 80466 Phone Number: (303) 258-0561 E-mail address: mark@cohenslaw.com Atty. Reg. #: 13178</p>	<p>EFILED Document – District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Mar 6 2010 5:45PM MST Filing ID: 29918706</p> <p>▲ COURT USE ONLY ▲</p> <p>Case Number:</p> <p>Div.: Ctrm.:</p>
<p>COMPLAINT</p>	

Plaintiff, for her Complaint, alleges as follows:

PARTIES

1. Plaintiff, Tori McMechan, resides at 408 Garfield Avenue, Nunn, Colorado 80648.
2. Defendant Town of Nunn ("Town") is and was at all times relevant a Colorado statutory town with its principal office at its Town Hall at 185 Lincoln Avenue, Nunn, Colorado 80648.
3. Defendant, Board of Trustees of the Town of Nunn ("Board") is and was at all times relevant to this action the body in which the legislative and corporate authority of the Town is vested. § 31-4-301, C.R.S. The Board's principal address is 185 Lincoln Avenue, Nunn, Colorado 80648.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over the parties because Plaintiff resides in Weld County and the Town is situated entirely in Weld County.

5. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution and pursuant to the statutes and rules cited herein.

6. Venue is proper pursuant to C.R.C.P. 98 because the facts giving rise to all claims set forth herein took place in Weld County.

GENERAL ALLEGATIONS

7. Prior to February 4, 2010, Plaintiff served as the appointed Town Clerk, Town Treasurer, and Court Clerk for the Town.

8. At all times relevant to this action the Town had adopted a municipal code known as the Nunn Municipal Code ("NMC").

9. At all times relevant to this action the NMC provided in relevant part:

2.08.040 Removal from Office - Grounds. Any town officer appointed by the Board who is incompetent or who is guilty of any willful violation of any of his/her official duties, may be removed from office, during his/her term of office, by a vote of a majority of all members elected to the Board.

2.08.050 Removal from Office - Notice. All charges preferred against any appointive officer shall be made in writing and shall clearly specify the cause or causes for removal. A copy of such charges, together with a notice of the time and place of hearing, shall be served upon the accused at least five (5) days prior to the date set for the hearing.

2.08.060 Removal from Office - Hearing. At the time and place set for the hearing, the Board shall meet and proceed according to its rules to hear the evidence against the accused, as well as the evidence offered in his/her behalf, adjourning from time to time as may be necessary, until all of the evidence has been heard. At the hearing, the accused may be heard by himself/herself or through counsel.

10. On January 29, 2010, the Town served a Notice of Hearing on Plaintiff that summarized certain allegations against Plaintiff and notified her that a hearing concerning those charges would be held on February 4, 2010.

11. The Notice of Hearing referred to Exhibits A-1 through M, but these exhibits were not served on Plaintiff on January 29, 2010.

12. The Notice of Hearing also contained a footer indicating that it contained a total of six pages, but the Notice of Hearing served on Plaintiff consisted of only three pages.

13. On February 1, 2010, and again on February 2, 2010, Plaintiff asked the Town to provide her with copies of the exhibits referred to in the Notice of Hearing and to provide

the missing pages of the Notice of Hearing, and to postpone the hearing so she and her counsel could prepare for it.

14. The Town denied Plaintiff's request to postpone the hearing, and did not provide her with the exhibits until 3:56 p.m. on February 3, 2010. When the Town did provide the exhibits it included exhibits N through S – exhibits not referred to in the Notice of Hearing.

15. At no time relevant to this action did the Defendants have rules governing the conduct of removal hearings.

16. A hearing took place before the Board on February 4, 2010, at which time Plaintiff and her counsel were present.

17. The attorney representing the Town and prosecuting the case against Plaintiff attempted to call Plaintiff as the Town's first witness. Plaintiff refused to testify, invoking the 5th Amendment and also insisting that under the NMC she had a right to hear the Town's evidence against her first and then present rebuttal evidence. In view of Plaintiff's refusal to testify during the Town's case-in-chief, the Board ruled that it would not allow her to testify at all and would not allow her to testify after the Town had presented its case against her.

18. At the conclusion of the hearing the Board voted to removal Plaintiff from her offices.

19. The Defendants' failure to provide proper notice of the allegations, as set forth herein, their failure to postpone the hearing, and their failure to allow Plaintiff to testify to rebut the charges, severely impacted Plaintiff's ability to prepare for the hearing and deprived her of a fair hearing.

20. In conducting the hearing the Board was acting for the Town in a judicial or quasi-judicial function.

21. The Board exceeded its jurisdiction and/or abused its discretion in one or more of the following ways:

a. Failing to provide a Notice of Hearing as required by the NMC by failing to provide the exhibits referred to in the Notice of Hearing until the day before the hearing;

b. Failing to provide pages 4 through 6 of the Notice of Hearing as the footer indicated the Notice of Hearing consisted of six pages;

c. Serving exhibits on the Plaintiff the day before the hearing that were not referred to in the Notice of Hearing;

d. Failing to provide Plaintiff with a notice that clearly specified the causes for removal;

- e. Failing to grant Plaintiff's request to postpone the hearing;
- f. Refusing to allow Plaintiff to testify after the Town presented its case-in-chief;
- g. Conducting a hearing although it had not adopted rules for the conduct of such hearings as required by Section 2.08.060 of the NMC;
- h. Making an implied finding that Plaintiff was incompetent;
- i. Making an implied finding that Plaintiff has committed willful violations of the NMC;
- j. Considering allegations of conduct that were not violations of Plaintiff's official duties.

22. Plaintiff has no plain, speedy and adequate remedy at law.

23. The Town is responsible for the actions of the Board.

WHEREFORE, Pursuant to C.R.C.P. 106(a)(4), Plaintiff seeks a determination that the Board exceeded its jurisdiction and abused its discretion, for costs and attorney's fees to the extent allowed by law, for an Order reinstating her to her appointed offices, and for such other relief as the Court deems just.

THE COHEN LAW GROUP
A Professional Corporation

*The signed original document is kept
in the Nederland office of The Cohen Law
Group, A Professional Corporation.,
as required by C.R.C.P. 121 §1-26(9)*

s/ Mark Cohen

Mark Cohen - # 13178

ATTORNEY FOR PLAINTIFF

DISTRICT COURT WELD COUNTY, COLORADO Court Address: 901 9 th Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038 Greeley, CO 80632 Phone Number : (970) 351-7300	FILED Document – District Court 2010CV219 Weld County District Court 19th JD Filing Date: Mar 23 2010 3:40PM MDT Filing ID: 30208634
PLAINTIFF: TORI MCMECHAN V DEFENDANTS: TOWN OF NUNN, BOARD OF TRUSTEES OF THE TOWN OF NUNN	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 10CV219 Division: 4
INITIAL CASE MANAGEMENT ORDER (Revised 10-27-09)	

THIS ORDER CONTAINS INFORMATION AND DEADLINES FOR CIVIL CASES TO WHICH C.R.C.P. 16.1 SIMPLIFIED PROCEDURE APPLIES (SEE SECTION IV), AND CASES TO WHICH C.R.C.P. 16 APPLIES (SEE SECTION V & VI).

I. PROCEDURES APPLICABLE TO ALL CIVIL PROCEEDINGS IN THE NINETEENTH JUDICIAL DISTRICT:

A. **ELECTRONIC FILING**: All counsel shall electronically file and serve, in accordance with C.R.C.P. 121 §1-26, all pleadings, motions, briefs, exhibits, and other documents using LexisNexis File & Serve. When filing electronically, the filing party shall retain a copy of the original document for production to the Court if necessary. A proposed order shall be filed electronically in Word or Word Perfect format. For more information on electronic filing, contact LexisNexis File & Serve at (888) 529-7587 or visit www.lexisnexis.com/fileandserve.

B. **PROPOSED ORDERS**: All motions shall be accompanied by an appropriate proposed order. E-filed orders shall not be scanned; instead, upload the original document in Word or WordPerfect to LexisNexis File & Serve. Failure to provide a proposed order in this format may result in your motion languishing without an order.

II. DEADLINES APPLICABLE TO ALL CIVIL CASES FILED PURSUANT TO EITHER C.R.C.P. 16 OR C.R.C.P. 16.1 SIMPLIFIED PROCEDURE:

A. **SERVICE OF PROCESS**: Returns of Service for all defendants shall be filed within sixty (60) days of the filing of the Complaint.

B. **DEFAULT JUDGMENT**: Application for default judgment shall be filed within twenty (20) days after default has occurred and should comply with C.R.C.P. 55 and 121 §1-14.

C. **CERTIFICATE OF COMPLIANCE**: No later than 45 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance stating that the parties have complied with all the requirements or, if they have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for failure to comply. C.R.C.P. 16(b)(7) or C.R.C.P. 16.1(b)(h).

The Court will consider extending these deadlines only upon timely filing of a motion showing good cause.

If an attorney or self-represented party fails to comply with Part II of this Order, the Court may dismiss the case without prejudice. This Order shall serve as the initial notice required by C.R.C.P. 41(b)(2) and C.R.C.P. 121 § 1-10.

III. DISCOVERY DISPUTES

The parties are encouraged to agree on an individual who will act as a mediator in the event of a discovery dispute. The mediator's job is to help (1) avoid and (2) resolve discovery problems, providing a speedy, efficient, and economical result. If a problem arises and agreement is not possible, the mediator will resolve it by ruling on the issue. If the parties so agree, they shall move the Court to appoint the agreed-upon person as a "special master" pursuant to C.R.C.P. 53 and C.R.S. §§ 13-22-302(8) and 13-22-313(1). The court may also appoint a master on its own volition pursuant to C.R.C.P. 53.

IV. CASE MANAGEMENT ORDER FOR CASES TO WHICH SIMPLIFIED PROCEDURE OF C.R.C.P. 16.1 APPLIES:

C.R.C.P. 16.1, effective for cases filed on or after July 1, 2004, will apply unless a party timely and properly elects to exclude the case from its provisions. Please refer to C.R.C.P. 16.1(d) for the deadlines and procedures if a party wishes to be excluded from the simplified procedures of C.R.C.P. 16.1. This Rule does not apply to those cases listed at C.R.C.P. 16.1(b). However, the parties may stipulate that the simplified procedures of C.R.C.P. 16.1 apply to a case in which a party is seeking a monetary judgment of more than \$100,000, provided the parties comply with the provisions of C.R.C.P. 16.1(e) for inclusion under this Rule.

This Court has adopted and will follow the presumptive deadlines set forth in C.R.C.P. 16.1; however, the judges in this district have set a deadline that the responsible attorney set the case for trial no more than thirty days after the case is at issue, as opposed to the forty-day limit set forth in the Rule. C.R.C.P. 16.1(g). **Please see Section V.A below, regarding the deadline for contacting the division clerk to schedule a trial in this district and the contact information for each district court civil division.**

The Court encourages the parties to refer to C.R.C.P. 16.1, especially the sections regarding disclosures and discovery, as C.R.C.P. 16.1 procedures and deadlines differ substantially from C.R.C.P. 16.

Please Note: If you elect to be excluded from application of the simplified procedure pursuant to C.R.C.P. 16.1(d), or if Rule 16.1 does not apply to your case, then the presumptive case management order of C.R.C.P. 16 will apply, with this Court's modifications as outlined in Section V & VI below.

V. CASE MANAGEMENT ORDER FOR CASES TO WHICH C.R.C.P. 16 APPLIES:

Pursuant to C.R.C.P. 16(b), as amended February 13, 2002 (effective July 1, 2002), a presumptive Case Management Order controls the course of these proceedings. Therefore, the presumptive deadlines set forth in C.R.C.P. 16(b)(4) through 16(b)(10) apply.

A. **TRIAL SETTING:** A Notice to Set Trial by Telephone shall be filed. Trial shall be set **no later than thirty (30) days** after the date the case is at issue. Settings are conducted by telephone and are non-appearance settings. To reach the Division in which your case has been assigned, please call

during division setting times between the hours of 8:30 a.m. and 10:00 a.m. on Tuesdays and Thursdays at (970) 351-7300 followed by the division extension:

Division 1 at extension 5410
Division 10 at extension 5467
Division D at extension 5550

VI. PRETRIAL MOTION DEADLINES FOR CASES TO WHICH C.R.C.P. 16 APPLIES:

A. SHRECK MOTIONS: To the extent a party wishes to challenge an opposing expert witness under C.R.E. 702 and *People v. Shreck*, 22 P.3d 68 (Colo. 2001), such motions setting forth the basis for the challenge shall be filed no later than sixty-five (65) days prior to trial. If a hearing is necessary, it shall be held no later than forty-five (45) days prior to trial.

B. MOTIONS IN LIMINE: All motions in limine must be filed no later than twenty-one (21) calendar days prior to trial. A party wishing to file a response to the motion in limine must do so within five (5) calendar days of the date the motion in limine was filed with the court. A reply may be filed within five (5) calendar days of the date the response was filed with the court.

If a request for a modified case management order is filed pursuant to C.R.C.P. 16(c), the deadlines set forth in the proposed modified order shall include those set forth above.

VII. ALTERNATE DISPUTE RESOLUTION

Cases in which trial length is two (2) days or more, the parties shall engage in alternate dispute resolution (“ADR”). While the Court prefers mediation, the parties may agree to any form of ADR defined in C.R.S. §§ 13-22-301 to -313. Plaintiff’s counsel or responsible attorney (if Plaintiff is self-represented) must file a certificate of completion of ADR at least seventy-five (75) days before trial. The court may schedule a status conference after receipt of the certificate of completion of ADR.

VIII. PLEADINGS

A. Motions or briefs in excess of ten (10) pages in length, exclusive of tables and appendices, are discouraged, and may not be considered by the Court. C.R.C.P. 121, § 1-15.

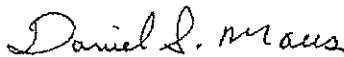
B. Please refer to C.R.C.P. 10, Form and Quality of Pleadings, Motions and Other Documents.

IX. NOTICE TO PARTIES WHO ARE NOT REPRESENTED BY A LAWYER: It is your responsibility to comply with all deadlines and requirements of this Case Management Order, the Colorado Rules of Civil Procedure, Colorado Rules of Evidence, and other orders issued by the court. You will be expected to be prepared for all hearings scheduled for this case. Please be advised that court personnel cannot provide legal advice to you.

X. NOTICE TO OTHER PARTIES: Plaintiff shall mail a copy of this Initial Case Management Order to all other parties who enter an appearance.

Dated: March 23, 2010


James F. Hartmann
Chief Judge

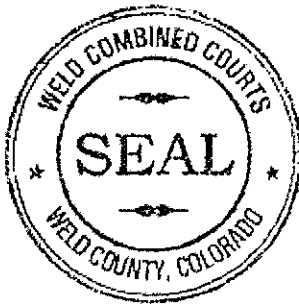

Daniel S. Maus
District Court Judge


Elizabeth Strobel
District Court Judge

This document was filed pursuant to C.R.C.P. 121, § 1-26. A printable version of the electronically signed document is available in the Court's electronic file.

I certify that the foregoing Initial Case Management Order was dispatched electronically to Plaintiff via LexisNexis.

Dated: March 23, 2010




Gale Karas
Court Judicial Assistant

This document was filed pursuant to C.R.C.P. 121, § 1-26. A printable version of the electronically signed document is available in the Court's electronic file.

<p>DISTRICT COURT, WELD COUNTY, COLORADO P.O. Box 2038 Greeley, Colorado 80632</p> <hr/> <p>Plaintiff(s): Tori McMechan</p> <p>Defendant(s): Town of Nunn, Board of Trustees of the Town of Nunn, and Jenny Johnson</p> <hr/> <p>Attorney for Plaintiff Mark Cohen The Cohen Law Group A Professional Corporation 110 Snyder Street, 2nd Floor PO Box 617 Nederland, CO 80466 Phone Number: (303) 258-0561 E-mail address: mark@cohenslaw.com Atty. Reg. #: 13178</p>	<p>EFILED Document – District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Apr 2 2010 9:44AM MDT Filing ID: 30378077</p> <p>▲ COURT USE ONLY ▲</p> <p>Case Number: 2010 CV 219</p> <p>Div.: Ctrm.:</p>
<p>AMENDED COMPLAINT</p>	

Plaintiff, for her Complaint, alleges as follows:

PARTIES

1. Plaintiff, Tori McMechan, resides at 408 Garfield Avenue, Nunn, Colorado 80648.
2. Defendant Town of Nunn ("Town") is and was at all times relevant a Colorado statutory town with its principal office at its Town Hall at 185 Lincoln Avenue, Nunn, Colorado 80648.
3. Defendant, Board of Trustees of the Town of Nunn ("Board") is and was at all times relevant to this action the body in which the legislative and corporate authority of the Town is vested. § 31-4-301, C.R.S. The Board's principal address is 185 Lincoln Avenue, Nunn, Colorado 80648. The full Board is comprised of seven trustees; five of the seven trustees took office on or about December 28, 2009.
4. The Town may only act through the Board, and the Town may properly be held liable for the actions of the Board.

5. Defendant Jenny Johnson ("Johnson") resides at 480 Washington Avenue, Nunn, Colorado 80648. Johnson is a member of the Board, but is named as a separate defendant in this action in her individual capacity for intentional torts she committed.

JURISDICTION AND VENUE

6. The Court has personal jurisdiction over the parties because Plaintiff resides in Weld County, the Town is situated entirely in Weld County, and Johnson resides in Weld County.

7. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution and pursuant to the statutes and rules cited herein.

8. Venue is proper pursuant to C.R.C.P. 98 because the facts giving rise to all claims for relief set forth herein took place in Weld County.

GENERAL ALLEGATIONS

9. On or about January 16, 2006, Town's then current Board of Trustees appointed Plaintiff to serve as the Town Clerk, Town Treasurer, and Town Court Clerk.

10. At all times relevant to this action the Town had adopted a municipal code known as the Nunn Municipal Code ("NMC").

11. At all times relevant to this action the NMC provided in relevant part:

2.08.040 Removal from Office - Grounds. Any town officer appointed by the Board who is incompetent or who is guilty of any willful violation of any of his/her official duties, may be removed from office, during his/her term of office, by a vote of a majority of all members elected to the Board.

2.08.050 Removal from Office - Notice. All charges preferred against any appointive officer shall be made in writing and shall clearly specify the cause or causes for removal. A copy of such charges, together with a notice of the time and place of hearing, shall be served upon the accused at least five (5) days prior to the date set for the hearing.

2.08.060 Removal from Office - Hearing. At the time and place set for the hearing, the Board shall meet and proceed according to its rules to hear the evidence against the accused, as well as the evidence offered in his/her behalf, adjourning from time to time as may be necessary, until all of the evidence has been heard. At the hearing, the accused may be heard by himself/herself or through counsel.

FIRST CLAIM FOR RELIEF - REVIEW UNDER C.R.C.P. 106

12. On January 29, 2010, the Town served a Notice of Hearing on Plaintiff that summarized certain allegations against Plaintiff and notified her that a hearing concerning those charges would be held on February 4, 2010.

13. The Notice of Hearing referred to Exhibits A-1 through M, but these exhibits were not served on Plaintiff on January 29, 2010.

14. The Notice of Hearing also contained a footer indicating that it contained a total of six pages, but the Notice of Hearing served on Plaintiff consisted of only three pages.

15. At least as early as January 29, 2010, again on January 31, 2010, and again on February 2, 2010, Plaintiff asked the Town to provide her with copies of the exhibits referred to in the Notice of Hearing and to provide the missing pages of the Notice of Hearing, and to postpone the hearing so she and her counsel could prepare for it.

16. The Town denied Plaintiff's request to postpone the hearing, and did not provide her with the exhibits until 3:56 p.m. on February 3, 2010. When the Town did provide the exhibits it included Exhibits N through S - exhibits not referred to in the Notice of Hearing.

17. At no time relevant to this action did the Town or Board have rules governing the conduct of removal hearings.

18. A hearing took place before the Board on February 4, 2010, at which time Plaintiff and her counsel were present.

19. The attorney representing the Town and prosecuting the case against Plaintiff attempted to call Plaintiff as the Town's first witness. Plaintiff refused to testify, invoking the 5th Amendment on the advice of counsel and also insisting that under the NMC she had a right to hear the Town's evidence against her first and then present rebuttal evidence if she desired. In view of Plaintiff's refusal to testify during the Town's case-in-chief, the Board ruled that it would not allow her to testify at all and would not allow her to testify after the Town had presented its case against her.

20. At the conclusion of the hearing the Board voted to remove Plaintiff from her offices.

21. The failure of the Town and Board to provide proper notice of the allegations, as set forth herein, their failure to postpone the hearing, and their failure to allow Plaintiff to testify to rebut the charges, severely impacted Plaintiff's ability to prepare for the hearing and deprived her of a fair hearing and due process under both the U.S. Constitution and the Colorado Constitution.

22. In conducting the hearing the Board was acting for the Town in a judicial or quasi-judicial function.

23. The Board exceeded its jurisdiction and/or abused its discretion in one or more of the following ways:

a. Failing to provide a Notice of Hearing as required by the NMC by failing to provide the exhibits referred to in the Notice of Hearing until the day before the hearing;

b. Failing to provide pages 4 through 6 of the Notice of Hearing as the footer indicated the Notice of Hearing consisted of six pages;

c. Serving exhibits on the Plaintiff the day before the hearing that were not referred to in the Notice of Hearing;

d. Failing to provide Plaintiff with a notice that clearly specified the causes for removal;

e. Failing to grant Plaintiff's request to postpone the hearing;

f. Refusing to allow Plaintiff to testify after the Town presented its case-in-chief;

g. Conducting a hearing although it had not adopted rules for the conduct of such hearings as required by Section 2.08.060 of the NMC;

h. Making an implied finding that Plaintiff was incompetent;

i. Making an implied finding that Plaintiff has committed willful violations of the NMC;

j. Considering allegations of conduct that were not violations of Plaintiff's official duties.

k. Johnson failed to recuse herself in spite of her longstanding bias against Plaintiff.

24. Plaintiff has no plain, speedy and adequate remedy at law.

25. The Town is responsible for the actions of the Board.

WHEREFORE, Pursuant to C.R.C.P. 106(a)(4), Plaintiff seeks a determination that the Board exceeded its jurisdiction and abused its discretion, for costs and attorney's fees to the extent allowed by law, for an Order reinstating her to her appointed offices, and for such other relief as the Court deems just.

SECOND CLAIM FOR RELIEF – RELIEF UNDER THE OPEN MEETINGS LAW

26. Plaintiff incorporates paragraphs 1-25 above. Further, Plaintiff incorporates each allegation in this Amended Complaint into each claim for relief set forth herein as if fully set forth in each claim for relief.

27. The Board met on January 28, 2010, and went into executive session ("the executive session") for the stated purpose of receiving legal advice.

28. The Board, which traditionally had allowed Plaintiff to be present during such executive sessions, did not allow Plaintiff to participate in the executive session.

29. At the conclusion of the executive session the Board approved charges against Plaintiff and set a hearing date.

30. Plaintiff has a reasonable belief that the Board violated the requirements of the Colorado Open Meetings Law, §§ 24-6-401 and 24-6-402, C.R.S., by, among other things, engaging in substantial discussion of matters that were beyond the scope of the exception that allows executive sessions for the purpose of receiving legal advice on specific legal questions and/or matters not enumerated § 24-6-402(4) and/or by agreeing on formal action in the executive session. See also, § 24-72-204(5.5).

WHEREFORE, Plaintiff prays for an Order directing the Town and Board to provide the Court with an accurate and complete copy of the electronic recording of the executive session, for an *in camera* review of the record of the executive session, for a determination that Defendants violated the Open Meetings Law, for an Order making public the record of matters not entitled to be discussed in the executive session, for costs and attorney's fees, and for such other relief as the Court deems just.

THIRD CLAIM FOR RELIEF – RELIEF UNDER THE OPEN RECORDS ACT

31. On or about February 11, 2010, Plaintiff submitted a written request to the Town pursuant to the Colorado Open Records Act, § 24-72-200.1 C.R.S., et. seq. ("the C.O.R.A. request"). A copy of the C.O.R.A. request is attached as **EXHIBIT 1**.

32. On or about February 18, 2010, the Town, through its attorney, submitted a response to Plaintiff's C.O.R.A. request. A copy of the response is attached as **EXHIBIT 2**.

33. Although Plaintiff disagrees with many of the assertions in the Town's response, she thereafter made numerous efforts to meet with Town officials to inspect such records as the Town was willing to let her inspect, all to no avail.

34. The Town's response did not comply with the requirements of the Open Records Act and the Town has not since complied with the requirements of the Open Records Act.

35. Further requests by Plaintiff to the Town for the requested records would be futile.

36. More than three business days prior to filing this Amended Complaint, Plaintiff sent a notice to the Town as required by § 24-72-204(5) C.R.S. A copy of that notice is attached as **EXHIBIT 3**.

WHEREFORE, Plaintiff prays for an Order directing the Town and Board to permit the requested inspection, for costs and attorney's fees, and for such other relief as the Court deems just.

FOURTH CLAIM FOR RELIEF – BREACH OF CONTRACT AS TO WAGES

37. At the time she accepted employment with the Town, Plaintiff had an oral agreement with the Town pursuant to which the Town agreed to pay her for her work. The agreement provided that the Town would pay Plaintiff \$14.00 per hour and that it would give her "comp time" at time and ½ if she worked more than forty hours per week.¹ The Town also agreed to allow Plaintiff vacation time, sick time, and a personal day. The Town also agreed and represented that it had and would continue to have an assistant on staff for Plaintiff. Subsequent to hiring Plaintiff, the Town raised Plaintiff's compensation to \$15.00 per hour. Plaintiff accepted her position based on these terms and the parties then entered into a course of dealing pursuant to which they abided by these terms for a period of time.

38. After the Board removed Plaintiff from her offices, the Town breached the agreement by refusing to pay Plaintiff in accordance with the terms of the agreement for work she had performed.

39. Plaintiff has made repeated requests to the Town and the Board for the sums owed her, but the Town continues to refuse to pay her.

40. Plaintiff has been damaged by the Town's actions in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for judgment against the Town for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

FIFTH CLAIM FOR RELIEF – VIOLATION OF FAIR LABOR STANDARDS ACT

41. The Town has failed to promptly pay wages owed to Plaintiff as required by the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq.

42. The Town's failure has been willful.

WHEREFORE, Plaintiff prays for judgment against the Town for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, for all penalties and damages Plaintiff is entitled to under the Fair Labor Standards Act, and for such other relief as the Court deems just.

¹ For example, if Plaintiff worked 44 hours in a given week, the Town would allow her "comp time" of six hours, representing the extra four hours multiplied by 1.5.

SIXTH CLAIM FOR RELIEF – UNJUST ENRICHMENT

43. Plaintiff performed work for the Town expecting that the Town would pay her for that work.

44. The Town accepted the benefits of Plaintiff's work.

45. Equity requires that the Town pay Plaintiff for the fair value of the work she did for the Town.

WHEREFORE, Plaintiff prays for judgment against the Town for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

**SEVENTH CLAIM FOR RELIEF – BREACH OF CONTRACT
AS TO GOOD FAITH AND NON-WAGE ISSUES**

46. The agreement between Plaintiff and the Town included an obligation of good faith.

47. The agreement between Plaintiff and the Town included an understanding that the Town would make reasonable efforts to provide Plaintiff with the resources required to properly perform her duties, including but not limited to, an assistant such as the one Plaintiff had when the Town appointed her to her offices and Plaintiff accepted the appointment.

48. At the time the Town hired Plaintiff and until approximately June of 2009, the Town employed an assistant whose duties were to assist Plaintiff in the performance of her duties.

49. The assistant quit her position in approximately June of 2009.

50. Plaintiff thereafter made repeated requests to the Town and the Board for a new assistant and repeatedly explained that without such help she would be unable to perform for the Town all of the duties she had traditionally performed.

51. The Town and Board ignored all of Plaintiff's requests for an assistant.

52. In approximately October of 2009, the Board also reduced the number of overtime hours that Plaintiff was allowed to work, thus making it even more difficult for Plaintiff to perform all her duties. Plaintiff so informed the Board.

53. The Town and Board's actions as set forth herein rendered it impossible for Plaintiff to perform all of the duties she had traditionally performed in spite of her best efforts.

54. The refusal of the Town and the Board to replace Plaintiff's assistant, their refusal to provide any additional help, and their reduction of overtime hours while demanding more from Plaintiff, were material breaches of Plaintiff's employment agreement.

55. The refusal of the Town and the Board to replace Plaintiff's assistant, their refusal to provide any additional help, and their reduction of overtime hours while demanding more from Plaintiff, were material breaches of the Town's obligation of good faith.

56. The removal of Plaintiff for allegedly unsatisfactory performance, after the Town and Board created a situation that made it impossible for Plaintiff to perform all her duties satisfactory was a breach of the Town's obligation of good faith.

57. After the Board removed Plaintiff from office, it nearly immediately hired two people to perform the duties it had been asking Plaintiff to perform by herself since her assistant quit.

58. Upon information and belief, the breaches as set forth herein were attended by circumstances of malice, or willful and wanton conduct as defined in § 13-21-102(1)(b), C.R.S., for the purpose of causing Plaintiff's performance to decline so the Town and Board could terminate her for cause.

59. The actions of the Town and Board damaged Plaintiff in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for judgment against the Town for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

EIGHTH CLAIM FOR RELIEF - 42 U.S.C. § 1983

60. At all times relevant to this action Plaintiff had rights under the U.S. Constitution that included a right to due process of law, a right to equal protection under law, a right to freedom of speech, and the right to petition the government for a redress of grievances.

61. At all times relevant to this action Plaintiff also had an interest in her appointed position, at least through the end of her appointed term in her offices, which term was to have ended in April of 2010.

62. In approximately August of 2009, Plaintiff, as a resident of the Town, signed a recall petition in support of the recall of trustees Johnson, Joyce Taylor ("Taylor"), and Karen Burd. Johnson and Taylor were members of the Board at the time the Board removed Plaintiff from her offices.

63. The Board purposely deprived Plaintiff of procedural due process in removing her from office as set forth herein. The members of the Board are "persons" within the meaning of 42 U.S.C. § 1983, and they took the actions complained of herein.

64. Upon information and belief, the Board removed Plaintiff from her offices and engaged in the other conduct complained of herein to retaliate against Plaintiff for signing the recall petition and to retaliate against her for other lawful conduct including, but not limited to, her filing of a worker's compensation claim in August of 2009, her notifying a trustee that he should not be using a road grader owned by the Town because the Town's insurance policy prohibited such use, and her refusal to authorize replacement of a water meter free of charge when a trustee or trustee's significant other caused it to freeze and break.

65. The Town and Board acted under color of state law and violated clearly established law, as they knew or should have known.

66. The Town and Board's conduct deprived Plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution.

67. The Board acted with malice.

WHEREFORE, Plaintiff prays for judgment against the Town for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, for an order reinstating Plaintiff to her appointed offices, for such other damages, penalties, and relief as is available under 42 U.S.C. § 1983 and the related statutes, and for such other relief as the Court deems just.

NINTH CLAIM FOR RELIEF – INTERFERENCE WITH CONTRACT

(As to Johnson)

68. Even before taking office as a trustee, and since becoming a trustee, Johnson knew of Plaintiff's agreement with the Town.

69. Even before taking office as a trustee, and since becoming a trustee, Johnson, by words and conduct, engaged in a pattern of knowingly presenting false and/or incomplete information to the Town and Board about Plaintiff with the intent of portraying Plaintiff in a bad light so as to cause the Town and Board to remove Plaintiff. This pattern includes, but is not limited to, falsely representing to the Board that she Johnson is an "accountant" and that she had found substantial amount of money missing from accounts that Plaintiff was responsible for, making false reports to the Town's police department concerning the Plaintiff, and making false statements to the Town and Board that Plaintiff had used Town resources for personal expenses.

70. Even before taking office as a trustee, and since becoming a trustee, Johnson, by words and conduct, intentionally caused the Town to breach its agreement with Plaintiff, and interfered with the Town's performance of its agreement, thereby causing the Town

not to perform its contract with Plaintiff, making it impossible for Plaintiff to perform all her assigned duties, and causing the Board to remove Plaintiff from office. Upon information and belief, Johnson is also responsible for the Town's refusal to pay Plaintiff the wages owed to her.

71. Johnson's interference with the agreement was improper.

72. Johnson's interference with the agreement caused Plaintiff damages in an amount to be proven at trial.

73. Upon information and belief, Johnson's conduct as set forth herein was attended by circumstances of malice, or willful and wanton conduct as defined in § 13-21-102(1)(b), C.R.S.

WHEREFORE, Plaintiff prays for judgment against Johnson for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

TENTH CLAIM FOR RELIEF – INTERFERENCE WITH CONTRACT
(As to Johnson)

74. Johnson engaged in extreme and outrageous conduct.

75. Johnson did so recklessly or with the intent of causing Plaintiff severe emotional distress.

76. Johnson's conduct caused the Plaintiff severe emotional distress.

77. Upon information and belief, Johnson's conduct as set forth herein was attended by circumstances of malice, or willful and wanton conduct as defined in § 13-21-102(1)(b), C.R.S.

WHEREFORE, Plaintiff prays for judgment against Johnson for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

ELEVENTH CLAIM FOR RELIEF – DEFAMATION
(As to Johnson)

78. Within the period of time allowed by the statute of limitations Johnson has published or caused to be published statements that generally characterize Plaintiff as incompetent in her position, as someone who has used Town resources for personal needs, stolen from the Town, sabotaged the Town, and as having threatened and harassed Johnson.

79. The statements caused Plaintiff actual damage.

80. The gist of the statements were false at the time they were published.

81. At the time of publication Johnson knew the statements were false or she made the statements with reckless disregard as to whether they were false.

WHEREFORE, Plaintiff prays for judgment against Johnson for such damages as may be proven at trial, for costs and attorney's fees to the extent allowed by law, and for such other relief as the Court deems just.

RESERVATION OF OTHER CLAIMS

Plaintiff reserves the right to ask the Court to allow her to add tort claims, including a claim for wrongful discharge in violation of public policy, after she has complied with the requirements of the Colorado Governmental Immunity Act pertaining to tort claims.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable and hereby tenders the required fee.

THE COHEN LAW GROUP
A Professional Corporation

*The signed original document is kept
in the Nederland office of The Cohen Law
Group, A Professional Corporation.,
as required by C.R.C.P. 121 §1-26(9)*

s/ Mark Cohen _____
Mark Cohen - # 13178
ATTORNEY FOR PLAINTIFF

STATE OF COLORADO)
) SS
COUNTY OF WELD)

AFFIDAVIT OF SERVICE
BUSINESS OR AGENT

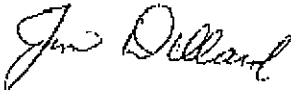
DOCUMENT NUMBER: 1000002273
DOCKET NUMBER: 2010 CV 219

FILED Document - District Court
2010CV219
CO Weld County District Court 19th JD
Filing Date: Apr 9 2010 1:54PM MDT
Filing ID: 30506491

I hereby certify that I am over the age of 18 years of age and not a party to this action and that I served the attached Civil Case Cover Sheet Summons & Amended Complaint, on the defendant, Town Of Nunn, by delivering a true copy thereof to Thomas Bender, who is this defendant's Mayor on April 7, 2010 at 1705, at:
185 Lincoln Avenue
Nunn, CO 80648
County of Weld, State of Colorado

John Cooke
Sheriff

By: Jim Dillard



Civil Process Server/Deputy Sheriff

Service: \$35.00
Mileage Fees: \$8.40

STATE OF COLORADO)
) SS AFFIDAVIT OF SERVICE
COUNTY OF WELD) BUSINESS OR AGENT

DOCUMENT NUMBER: 1000002273
DOCKET NUMBER: 2010 CY 219

I hereby certify that I am over the age of 18 years of age and not a party to this action and that I served the attached Civil Case Cover Sheet Summons & Amended Complaint, on the defendant, Board Of Trustees, Town Of Nunn, by delivering a true copy thereof to Thomas Bender, who is this defendant's Mayor on April 7, 2010 at 1705, at:
185 Lincoln Avenue
Nunn, CO 80648
County of Weld, State of Colorado

John Cooke
Sheriff

By: Jim Dillard



Civil Process Server/Deputy Sheriff

Service: \$35.00
Mileage Fees: \$8.40

STATE OF COLORADO)
) SS AFFIDAVIT OF SERVICE
COUNTY OF WELD) UPON DEFENDANT PERSONALLY

DOCUMENT NUMBER: 1000002274
DOCKET NUMBER: 2010 CV 219

I hereby certify that I am over the age of 18 years of age and not a party to this action and that I served the attached Civil Case Cover Sheet Summons & Amended Complaint, on the defendant, Jenny Johnson, by delivering to and leaving with said defendant, personally, a true copy thereof on April 7, 2010 at 1021, at:

103 2nd Street
Ault, CO
County of Weld, State of Colorado.

John Cooke
Sheriff

By: Gary Myers



Civil Process Server/Deputy Sheriff

Service: \$35.00
Milage Fees: \$8.40

DISTRICT COURT, WELD COUNTY, COLORADO Court Address: PO Box 2038 Greeley, Colorado 80632	EFILED Document – District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Apr 26 2010 2:10PM MDT Filing ID: 30777528 ▲ COURT USE ONLY ▲ Case No: 2010CV219 Ctrm:
Plaintiff: TORI McMECHAN Defendants: TOWN OF NUNN, BOARD OF TRUSTEES OF THE TOWN OF NUNN, and JENNY JOHNSON	
OVERTURF MCGATH HULL & DOHERTY, P.C. Mark C. Overturf, #15188 Meredith L. McDonald, #31384 625 E. 16 th Avenue, Suite 100 Denver, Colorado 80203 Telephone: 303-860-2848 Facsimile: 303-860-2869 E-mail mco@omhdlaw.com mlm@omhdlaw.com	
DEFENDANTS' <u>UNOPPOSED</u> MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING	

Defendants, **TOWN OF NUNN, BOARD OF TRUSTEES OF THE TOWN OF NUNN, and JENNY JOHNSON**, by and through their counsel, **OVERTURF MCGATH HULL & DOHERTY, P.C.**, and for their Unopposed Motion for an Enlargement of Time to File Responsive Pleading, state as follows:

I. CERTIFICATE OF COMPLIANCE PURSUANT TO C.R.C.P. 121

Counsel for Defendants consulted with counsel for Plaintiff, Mark Cohen, who does not oppose the relief requested herein.

II. MOTION

1. Defendants were served with Plaintiff's Summons and Complaint on April 7, 2010. As such, Defendants' responsive pleadings are due on or before April 27, 2010.

2. Plaintiff's Amended Complaint brings numerous claims for relief against the Defendants, which require more extensive evaluation of the applicable facts and law related to Plaintiffs' claims. As such, Defendants need additional time to evaluate the applicable facts and law raised by Plaintiff's Amended Complaint, and submit an appropriate responsive pleading.

3. No other extensions of time have been requested related to Defendants' responsive pleadings in this matter. No party will be prejudiced by the Defendants' request.

WHEREFORE, Defendants respectfully request that this Court grant Defendants an enlargement of time in which to file their responsive pleading, up to and including May 14, 2010.

Respectfully submitted this 26th day of April, 2010.

**OVERTURF McGATH
HULL & DOHERTY, P.C.**

By */s/ Meredith L. McDonald*
*Original signature on file at Overturf McGath
Hull & Doherty, P.C.*

Mark C. Overturf
Meredith L. McDonald
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADINGS** was electronically filed with JusticeLink on April 26, 2010 and served on the following:

Mark Cohen, Esq.
The Cohen Law Group
110 Snyder Street, 2nd Floor
PO Box 617
Nederland, CO 80466
Attorney for Plaintiff

S/ Anna Phillips

In accordance with C.R.C.P. 121, §1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

DISTRICT COURT, WELD COUNTY, COLORADO Court Address: PO Box 2038 Greeley, Colorado 80632	EFILED Document – District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Apr 26 2010 2:10PM MDT Filing ID: 30777528 ▲ COURT USE ONLY ▲ Case No: 2010CV219 Ctrm:
Plaintiff: TORI McMECHAN Defendants: TOWN OF NUNN, BOARD OF TRUSTEES OF THE TOWN OF NUNN, and JENNY JOHNSON	
ORDER RE: DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING	

THIS MATTER, having come on to be heard upon the Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading, the Court having reviewed same and being fully advised in the premises;

IT IS HEREBY ORDERED that the Motion is GRANTED. Defendants are granted an enlargement of time in which to file their responsive pleading, up to and including May 14, 2010.

DATED this _____ day of _____, 2010.

BY THE COURT:

 District Court Judge

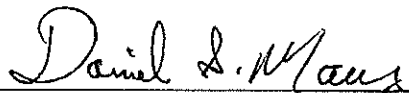
DISTRICT COURT, WELD COUNTY, COLORADO Court Address: PO Box 2038 Greeley, Colorado 80632		EFILED Document -- District Court 2010CV219 CO Weld County District Court 19th JD Filing Date: Apr 27 2010 1:42PM MDT Filing ID: 30801803 ▲ COURT USE ONLY ▲ Case No: 2010CV219 Div: 4
Plaintiff: TORI McMECHAN Defendants: TOWN OF NUNN, BOARD OF TRUSTEES OF THE TOWN OF NUNN, and JENNY JOHNSON		
ORDER RE: DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING		

THIS MATTER, having come on to be heard upon the Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading, the Court having reviewed same and being fully advised in the premises;

IT IS HEREBY ORDERED that the Motion is GRANTED. Defendants are granted an enlargement of time in which to file their responsive pleading, up to and including May 14, 2010.

DATED: APR 27 2010

BY THE COURT:


 District Court Judge