
MEMORANDUM

Our File Number: 228685-00102

TO: Colorado Springs City Council

FROM: Eric Hall of Lewis Roca Rothgerber Christie LLP
Outside Counsel Retained to Represent the City and its Employees

DATE: January 8, 2018

SUBJECT: *Leslie Weise v. City of Colorado Springs, Andres Pico, Bill Murray, Amy Trinidad, Wynetta Massey, Tom Strand, Helen Collins, Keith King, Jill Gaebler, Larry Bagley, Don Knight, and Merv Bennett, Case No. 17-cv-02696-PAB-NYW, United States District Court for the District of Colorado*

This memorandum summarizes the facts alleged in the above-referenced case as you consider the claims against the City officials involved.

NATURE OF THE CASE

Plaintiff, Leslie Weise, filed an action in the United States District Court for the District of Colorado alleging that the City, the City Attorney, and former and current City Council members violated Ms. Weise's First Amendment rights and retaliated against her because of her speech. Ms. Weise also alleges that the City Attorney, Wynetta Massey, the Public Affairs Specialist for Colorado Springs Utilities, Amy Trinidad, and two members of City Council, Bill Murray and Andy Pico, defamed her and intentionally inflicted her with emotional distress when they disagreed with Ms. Weise's statements about a privileged air quality report regarding Martin Drake Power Plant.

Ms. Weise is an attorney. She has an active license to practice law in California. She had law licenses in New York and Pennsylvania, but they are not currently active. She has never had a license to practice law in Colorado.

In August 2015, Ms. Weise submitted a request under the Colorado Open Record Act (CORA) for an air quality report related to the Drake Plant. The report is protected by attorney-client and attorney work-product privileges, and so the request was denied. Ms. Weise challenged this denial by filing suit in El Paso County District Court under CORA. The District Court, after reviewing the report under seal, agreed that the report was privileged and therefore was properly withheld by the City. Ms. Weise appealed this decision to the Colorado Court of Appeals.

One of the clerks at the Court of Appeals mistakenly copied the report, which remained under seal, to the compact discs for both parties as part of the appellate record. As she was preparing her appeal, Ms. Weise opened the file with the privileged report. Despite each page clearly being marked as privileged, she read it. Ms. Weise then filed a motion with the court requesting guidance, given the inadvertent disclosure.

On November 16, 2016, the court issued an order acknowledging that the sealed file had been inadvertently sent to Ms. Weise and requiring both parties to return the CDs. The court also ordered that the report “may not be downloaded, copied, otherwise retained, or disseminated,” and that “[a]ny distribution of the sealed material will be a violation of Court Orders and subject to further appropriate action.”

On November 21, Ms. Weise filed another motion with the Court of Appeals requesting that the privileged report be made public. In that motion, she discussed information contained in the report. Within minutes of filing her motion, she also sent it to the media, who subsequently published her allegations, including allegations containing information from the sealed report. In the aftermath of this disclosure, Mr. Pico, Mr. Murray, and Ms. Trinidad made statements disagreeing with Ms. Weise’s allegations about the report. Ms. Weise now claims these statements amount to calling her a “liar” and thus, in her opinion, are defamatory.

On November 22, the City Attorney’s office opposed Ms. Weise’s motion, and asked that the court hold Ms. Weise in contempt for intentionally violating the court’s November 16 order. The Court of Appeals agreed with the City’s position, and initiated contempt proceedings against Ms. Weise for violating its order. In early February 2017, before the contempt proceedings had concluded, the parties settled their dispute. In exchange for the City withdrawing its request for contempt, Ms. Weise agreed to not make any further disclosures of the contents of the privileged report and to dismiss her appeal.

Because Ms. Weise engaged in conduct that may have violated her ethical obligations as a licensed attorney, the City Attorney, Ms. Massey, was required by the Colorado Rules of Professional Conduct to report it to the appropriate disciplinary authorities. In April 2017, Ms. Massey filed formal grievances against Ms. Weise with the offices of attorney regulation in California, New York, and Pennsylvania. City Council consented to the filing of the grievances. The grievances currently remain under consideration by New York regulation counsel.

In this lawsuit, Ms. Weise is seeking an unspecified amount of money to include damages for emotional distress, loss of reputation, humiliation, loss of enjoyment of life, and other pain and suffering; economic damages; punitive damages; attorney fees and costs; and pre- and post-judgment interest.

RECOMMENDATION

The Civil Action Investigation Committee has recommended that the City represent the City officials as required by the Colorado Governmental Immunity Act, C.R.S. 24-10-110, and City

Code 1.4.302. The City officials were acting in the course and scope of their employment¹ and not in a willful or wanton manner. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.

¹ The caption to the complaint indicates that Ms. Trinidad is being sued in her individual capacity only. She is the only individual defendant so named. However, every substantive allegation in the complaint indicates that the conduct for which she is sued occurred in her capacity as spokesperson for Colorado Springs Utilities. See Complaint ¶¶ 16, 40, 58-60. Thus, despite the caption, it seems clear that Ms. Trinidad was acting in the course and scope of her employment, and thus is entitled to a defense from the City.