

<p>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: 7325 South Potomac Street Centennial, Colorado 80112</p>	
<p>PLAINTIFF (s) JAMES W. BURNESON Pro Se</p> <p>V</p> <p>DEFENDANT(s)</p> <p>DAM EAST HOMEOWNERS' ASSOCIATION A NON PROFIT CORPORATION BOARD OF DIRECTORS: President Jake Hummel Esq., Kelsey Quigg Director, Julie Geyer Vic President, Cathleen Speidel Treasurer, and Heather Swigert Director, Fritz Herman Chairman ACC. Tom Ruzicka Co-Chairman ACC</p>	<p>Case Number: 07 CV 1609</p> <p>Div 408 Ctm: ____</p>
<p>Attorneys: James W. Burneson Pro Se Address: 12641 E. Bates Cir Aurora, CO 80014 Phone Number: 303-750-1500</p>	
<p>PLAINTIFF'S UPDATED MOTION TO REVIEW ACTIONS TAKEN BY THE COURT AT THE FEBRUARY 13, CASE MANAGEMENT HEARING REQUIRE JUDGE SPENCER TO RECUSE HERSELF AND MOTIONS AND ORDERS ISSUE BE REVERSED BY A NEW APPOINTED EXPERIENCED DISTRICT JUDGE</p>	

COMES Now Plaintiff James W. Burneson Pro Se request the court to grant the Motion stated above which is now corrected with an affidavit and with additional reasons as follows: :

1. Mr. Lane had ex parte communication with Judge Spencer in her Chamber on the morning before the hearing scheduled for February 13, 2008. Plaintiff observed Mr. Lane entering the courthouse building ahead while Mr. Burneson was delayed by the screening process of entering the building. Mr. Burneson proceeded to the assigned courtroom 408 and found it locked. He then proceeded to the Judge Spencer's office to check in and was met by one of the staff members. She seemed very nervous and without asking my name questioned "Are you here to check in?" Mr. Burneson responded "yes" without giving his name. The staff person immediately jumped from her chair and escorted him out of the office and said "I'll unlock the court room you go around to the front of the court room to enter.

Where upon Mr. Burneson was given access to the court room. Time 8:10 AM. At approximately 8:28 AM Mr. Lane made his appearance in the courtroom and after that Judge Spencer appeared at 8:35 AM.

It is Mr. Lane's standard operating procedure to compromise the Judge to his side before a trial or hearing. This has been going on since 2003. In past litigation starting with Judge Ruddick, then Judge Rafferty, Judge Leopold, Judge Steinhart, Judge Cross, Judge Ettenberg, Judge Morris, Judge Samour and now Judge Spenser all had ex parte communications...

CORRECTION: Plaintiff has ordered a copy of the transcript of the February 13, hearing which should be completed within 20 days of request made February 26, 2008. All parties will be provided a copy to review and the flow of the conversation between Judge Spencer and Mr. Lane will determine the hearing was scripted by both of them. The other way to prove ex parted communication has occurred is when Mr. Lane can't communicate with the judge he files a high number of motions. Judge Platt was first assigned this case and the number of court fillings by Mr. Lane was of a high number. When he can communicate with the judge ex parte he seldom files many motions since his ideas are put forth verbally and they are then repeated in the court hearing by the judges. After Judge Spencer was assigned this case Mr. Lane stop filing motions.

2. The subject of mediation was suggested which has no purpose in this dispute. It was suggested by Mr. Lane during his ex parte meeting along with having a company hired to index all the pages of the HOA files which also has no purpose except both increase suggestions increase the cost to Plaintiff which is in his efforts to inspect the records. Neither of these services benefits the Plaintiff or the court.

A. The suggestion of mediation can not provide any solutions in this dispute. Plaintiff has experience JAG mediation and it can succeed only if the dispute can be compromised as to a value by both parties to the dispute. If the dispute involves money the two parties can discuss the amount both would agree on and if a compromise can be reached on the value both will accept the mediation is a success. This dispute is about keeping the records of the HOA closed or open for Plaintiff's inspection. How can that be compromised? If Plaintiff thought mediation could succeed he would have asked for

it instead of filing this lawsuit. Mr. Lane wants mediation by one of his friendly judges who he can communicate ex parte with. He has over 25 years in this business and knows all judges active or retired. Plaintiff refuses to compromise on open inspection or closed books and that foretells that a JAG mediation will be a waste of time and money which is the purpose of Mr. Lane suggestion to Judge Spencer. This Order needs to be reversed as not being worth the time or money for no compromise can be reached in mediation. Plaintiff will not compromise his request to inspect the books from 2000 to the present.

B. The suggestion to have a commercial company bid on indexing every page of the HOA records is worthless if there are records missing. The indexing of records in a box with records removed and not in the box proves nothing but expensive which is what Mr. Lane wants again to incur against Mr. Burneson. The numbers 1 through 3,000 pages with 200 pages missing proves nothing. Here again Judge Spencer doesn't understand how the system works and how it fails if records are missing before they are numbered. A commercial company can only index records that are provided in a box and their indexing doesn't cause the records to become complete. This Order needs to be reversed for lack of purpose and expense to achieve nothing.

Why does a judge agree with the defense attorney to order these two actions above which only result is causing an expense and time delay to Plaintiff's complaint in this court? The answer is inexperience at being a judge.

3. Judge Spencer made a ruling on a Motion filed by Mr. Lane dated October 15 2007. She ignored Plaintiff's Motion filed on October 18, 2007 that proved the facts claimed by Mr. Lane in his Motion were a lie. Plaintiff doubts she ever read his motion of February 18. She would have needed to hold a hearing requested by Plaintiff's Motion to question the property manager and board members as to what was the truth. How does a judge ignore a motion like this and claim to be impartial? She is not impartial because of Mr. Lane massages her ego as a new judge to control her opinion to agree with his requests.

4. In Mr. Burneson's opinion Judge Spencer does not have enough experience to refuse ex parte suggestions by the experienced lawyer Mr. Lane as to how to stop Mr. Burneson from see the books. Mr. Burneson believes he has spent more time in court trials and hearings than Judge Spencer has as been on the bench. She is no match for Mr. Lane who knows every dirty trick in litigation which he has taught Mr. Burneson at his own expense.

5. If it is proven Judge Spencer has less than two years experience on the bench before this appointment she lacks the knowledge to preside over any litigation involving Jeffrey Lane. According to Chief Justice Mullarkey's Newsletter of "District Judge Finalists Selected dated July 20th 2006" Judge Spencer came from the U.S. Attorney's which has no judges on staff. So up to that date Judge Spencer was a functioning Attorney in the U.S. Attorney's Office and not on the bench.

So from July 20 2006 to February 13, 2008 where has Judge Spencer been in training or on the bench performing the duties of a judge?

6. Plaintiff filed a discovery motion for a subpoena to order the HOA bank to provide all bank records from the Dam East Homeowners Association bank records from year 2000 to 2007 when it was last used as the bank for this account. Because Jeffrey Lane told Judge Spencer this was not to be allowed Plaintiff's rights of discovery was denied. The bank records had already been cleared by the bank with a staff charge of \$65.00 and \$3.00 per page of copies of checks. Since Mr. Lane doesn't want copies of checks showing payments to him, Tim Moeller Esq. and Rich Johnston Esq. Judge Spencer denied Plaintiff's Motion to subpoena the bank records. Is this the actions and rulings of an impartial judge? All of Judge Spencer's rulings are for the benefit of Mr. Lane in his efforts to stop the books from being inspected by Plaintiff.

7. At this time this case is a mistrial and needs to be stopped for an experienced Judge to be appointed and subject to his/her rulings on all issues ruled by Judge Spencer to be continued or reversed. No further actions should be scheduled for Plaintiff or Defendant's counsel to proceed until a hearing can be scheduled on this motion for recusal. A copy of the transcript must be provided by the court for this hearing. After Judge Spencer agrees to recuse herself an appointment of a new Judge will be made by Chief Judge Sylvester.

8. Attached is a copy of Chief Judge Stuart's letter concerning Perjury in a civil court. I ask Judge Spencer how she will stop Mr. Lanes from suborn perjury of his witnesses as he has done in previous cases. The Plaintiff has been denied a fair trial since witnesses offered by Mr. Lane lie on the stand as they were instructed since no DA will prosecute them for lying. In the history of this State there is no record of a DA prosecuting perjury in a civil case. This will still be an issue for the next judge to answer before this case can proceed.

9. The Court must hold a hearing to consider all the evidence cited in this motion to recuse including the transcript of the hearing where this mistrial started. Plaintiff will give notice to all parties that the transcript is completed by sending a copy to everyone. After receipt of said copy a hearing date will be requested by Plaintiff to be set by the court.

10. Plaintiff is publishing most documents involving this case on this internet website so the public can read along all actions taken by this court and any future judge appointed to this court. The first document is the complaint and most of the other motions filed except for the multitude of Mr. Lane's filing to intimidate Plaintiff into holding depositions before the case management hearing was held. Mr. Lane forgot he was not a Magistrate and could not order the Plaintiff to comply with his demands as a Defense Counsel.

WHEREFORE Plaintiff James W. Burneson Pro Se requests this court to recuse herself for not being prepared to offer an impartial hearing due to the ex parte communication by Mr. Lane that caused her rulings cited above. Being new to the bench Judge Spencer can not provide a fair trial for the Plaintiff and thus must recuse herself from continuing in this litigation. The 18th District Court in the name of Chief Judge Sylvester must set some

standards to control any future litigation by Mr. Jeffrey Lane in the 18th District Court of Arapahoe County. His appearance in all the past courts involving Plaintiff James W. Burneson Pro Se will be proven he acted above the law and it can be proven he had ex parte communications with each judge in each case. This evidence will be provided by the published transcripts and copies of motions filed from all past court cases litigated by Mr. Lane against Mr. Burneson as published on www.court-house.com

To allow this litigation to continue under these conditions with out the court's recusal will be a miscarriage of justice under the control of Jeffrey Lane of Patterson, Nuss & Seymour, P.C. and recently of Springer and Steinberg.

FUTHER THE AFFAINT SAYETH NOT.

Executed on this _____ day of February 2008

James W. Burneson
12641 E. Bates Cir
Aurora, CO 80014
303-751-3846

State of Colorado

County of Arapahoe

The forgoing instrument was acknowledged before me this ____ day of February 2008 by James W. Burneson.

My commission expires _____ Witness my hand and official seal

Notary Public

CERTIFICATE OF SERVICE

I hereby certify on this day _____ February 2008, mailed a copy of this Motion by US Postal mail with correct postage to those addressed below:

Jeffrey Lane
Springer and Steinberg P.C.
1600 Broadway Suite 1200
Denver, CO 80202
Fax 303-832-7116

Earl Johnson Manager
Western States Properties Services Inc.
10020 W. Girard Ave.
Denver, Co 80231

By _____
Jim Burneson

CC Chief Justice Mullarkey, Chief Judge Sylvester and Governor Ritter.

A rating will be recorded at www.ratethecourts.com after this request for recusal has been resolved.