

<p>DISTRICT COURT, ARAPAHOE COUNTY STATE OF COLORADO</p> <p>Court Address: 7325 S. Potomac Street Englewood, CO 80112</p> <hr/> <p>Plaintiff(s): JAMES W. BURNESON</p> <p>v.</p> <p>Defendant(s): DAM EAST HOMEOWNERS' ASSOCIATION A NON PROFIT CORPORATION BOARD OF DIRECTORS: president Jake Hummel, Esq., Kelsey Quigg Director, Julie Geyer Vic (sic) President, Cathleen Speidel Treasurer, and Heather Swigert Director, Fritz Herman Chairman ACC, Tom Ruzicka Co-Chairman ACC.</p> <hr/> <p>JEFFREY A. LANE SPRINGER AND STEINBERG, P.C. 1600 Broadway Suite 1200 Denver, Colorado 80202 Phone Number: (303) 861-2800 Fax Number: (303) 832-7116 E-mail: jlane@springer-and-steinberg.com Atty. Reg. No. 11356 <i>Attorneys for Defendants</i></p>	<hr/> <p>Case Number: 07CV1609</p> <p>CTM: 408</p>
<p align="center">RESPONSE TO DOCUMENT FILED BY PLAINTIFF CAPTIONED "PLAINTIFF RECUSES JEFFREY LANE FROM REPRESENTING THE DAM EAST HOMEOWNER ASSOCIATION AFFIDAVIT"</p>	

Defendants, by and through their attorneys Springer and Steinberg, P.C., respond to the document filed by plaintiff captioned "Plaintiff Recuses Jeffrey Lane From Representing The Dam East Homeowner Association Affidavit" ("Document") as follows:

1. The Document is not a pleading or motion authorized by the Colorado Rules of Civil Procedure and is not supported by a recitation of legal authority as required by C.R.C.P. 121 Section 1-15 (1), and therefore should be stricken.
2. Counsel for defendants, Jeffrey A. Lane has been counsel for The Dam East Homeowners Association in litigation involving Mr. Burneson on the following cases and in the following courts:

- a. *The Dam East Homeowners Association, et. al v. James W. Burneson*, Arapahoe County Court, case number B04 C 4421;
- b. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 02 CV 1748;
- c. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 02 CV 1748;
- d. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 02 CV 0028;
- e. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 05CV4675;
- f. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 05CV4676; and
- g. *James W. Burneson v. The Dam East Homeowners Association, et. al*, District Court for Arapahoe County, case number: 07CV1609; and
- h. *James W. Burneson v. The Dam East Homeowners Association, et. al*, Court of Appeals, case number: 04 CA 999.

3. With the exception of the Arapahoe County Court matter, plaintiff at all times, in all the above listed cases, appeared *pro se*. Plaintiff was represented for a short period of time in case number B04C4421 by Jason Querdon, Esq. Plaintiff was *never* represented by the law firm of Springer and Steinberg, P.C. in *any* litigation involving any of the parties to this lawsuit or any person or entity represented by Jeffrey A. Lane.

4. With respect to the disqualification of counsel, Rule 1.9(a) of the Rules of Professional Conduct addresses this issue. The Rule provides as follows:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

5. Motions to disqualify counsel rest within the sound discretion of the trial court. The party seeking disqualification under Rule 1.9 must provide the court with specific facts to show that disqualification is necessary and he cannot rely on speculation or conjecture. Specifically, the moving party must show that: (1) an attorney-client relationship existed in the past; (2) the present litigation involves a matter that is

'substantially related' to the prior litigation; (3) the present client's interests are materially adverse to the former client's interests; and (4) the former client has not consented to the disputed representation after consultation. *Funplex Partnership v. F.D.I.C.*, 1998, 19 F.Supp.2d 1201. (internal citation omitted); See *Food Brokers, Inc. v. Great Western Sugar Co.*, App.1984, 680 P.2d 857.

6. Substantiality is present if the factual contexts of the two representations are similar or related. The moving party must provide the court with sufficient evidence to enable the court to reconstruct the attorneys' representation of the former client, to infer what confidential information could have been imparted in that representation, and to decide whether that information has any relevance to the attorney's representation of the current client. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question. If there is a reasonable probability that during the course of the earlier representation, the former client disclosed confidential information which could be used against him in the subsequent adverse representation, the two matters are considered to be substantially related. *Funplex Partnership*, supra.

7. The Document filed by plaintiff does not meet his burden in any respect. Although the undersigned has not conducted any investigation into the matter and has not discussed the matter with Harvey A. Steinberg, upon information and belief the prior matter that was the subject of the prior representation was a criminal matter entirely unrelated to the defendants in this case.

8. The personal accusations set forth in the Document regarding Jeffrey A. Lane, Harvey A. Steinberg and Jeffrey A. Springer are immaterial and scandalous as contemplated by C.R.C.P. 12 (f) and defendants request that these accusations be stricken from the record pursuant to the rule.

Wherefore, defendants request that the relief requested by plaintiff be denied for the reasons set forth herein.

DATED this 14th day of March, 2008.

Respectfully submitted,

SPRINGER AND STEINBERG P.C.

By: /s/ Jeffrey A. Lane
Jeffrey A. Lane, #11356
Springer and Steinberg, P.C.
1600 Broadway Suite 1200

Denver, Colorado 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March 2008, a true and correct copy of the foregoing was filed electronically and served via US Mail, postage prepaid and addressed as follows:

James W. Burneson
12641 E. Bates Circle
Aurora, CO 80014

/s/ Zachary C. Jobe