

Court rejects Allred's request to disqualify judge in gang injunction case

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SALT LAKE CITY — A federal judge Tuesday rejected Weber County Attorney Chris Allred's request that another judge be disqualified from handling a long-running lawsuit over the Ogden anti-gang injunction. An attorney representing Allred and Weber County filed a motion Oct. 23 seeking U.S. District Judge Clark Waddoups' recusal from hearing the suit, which was filed by two Ogden men who claimed their rights were violated by the injunction.

Allred contended Waddoups demonstrated bias against him when the judge in a September ruling questioned the accuracy of Allred's declarations in court that the county had no gang membership data in any form.

In his ruling upholding the claims of Leland McCubbin and Daniel Lucero, Waddoups said a Weber County Jail deputy had testified in an unrelated case in 2016 that the jail did collect and keep information about local gang members.

Allred said in reaction to the ruling that the jail keeps those notes only to separate members of different gangs in cellblocks and that they have no purpose related to a gang injunction.

In his decision on the disqualification request, Judge Ted Stewart said he was rejecting Allred's motion because "Judge Waddoups' rulings do not evidence the degree of favoritism or antagonism required for recusal."

The motion was "largely based" on conclusions reached by Waddoups on the matters at issue, Stewart said.

"The proper vehicle to address erroneous rulings is appeal, not recusal," Stewart wrote.

He added that legal precedent says a judge's expressions of "annoyance, and even anger," are insufficient grounds for disqualification.

"The court cannot conclude that Judge Waddoups' comments 'display a deep-seated antagonism that would make fair judgment impossible,'" Stewart wrote.

"Judge Waddoups was doing what judges do every day. Moreover, many of the alleged offending statements were made in an effort to distinguish the facts of this case" from previous cases.

Stewart further said Allred and the county "overstate their case."

Allred and former County Attorney Dee Smith, architects of the gang injunction, had argued that Waddoups "assumed (they) were lying under oath (and) is seemingly trying to embarrass or defame" them.

"Defendants' hyperbolic statements are not a fair or accurate reflection of Judge Waddoups' decision," Stewart said. "Judge Waddoups made no finding that Mr. Allred or Mr. Smith lied or that they cannot be trusted. Instead, he pointed out evidence that he believed contradicted statements they had made, thereby creating a dispute of fact ..."

Stewart also said Allred and the county "make the spurious accusation" that "there is a reasonable likelihood that it could be perceived that the judge was trying to defame the elected Weber County Attorney, knowing that his words would be published in the media."

The judge said the county and Allred "offer nothing to support this claim."

"A judge should not recuse himself on unsupported, irrational, or highly tenuous speculation," Stewart added.

In their lawsuit, filed in 2015, Lucero and McCubbin argued their civil rights were violated by the 2010 injunction served upon people identified in an Ogden Police Department database as gang members.

Waddoups granted summary judgment to the pair, saying their due process rights were violated. But other elements of the suit remain in play and now head toward trial. At trial, monetary damages to be paid to Lucero and McCubbin will be determined for the due process violation already established. Allred said by email that Stewart's decision on the recusal is final and it essentially means the judge determined Waddoups is impartial.

"We will move forward with trial," Allred said, adding that appeals of rulings on the key issues are possible.

Ogden City settled with McCubbin and Lucero in 2018 and are no longer part of the case.

The Weber County Attorney's Office, working with the Ogden Police Department, filed the public-nuisance injunction against the Trece gang in 2nd District Court in 2010 after the authorities cited escalating gang-related crime in the city.

The Utah Supreme Court threw out the injunction in 2013, ruling it was invalid because no leaders of the Trece gang were identified and served with it.

After, county prosecutors said they might try to redraft the injunction to eliminate the procedure error. Subsequently, the two Ogden men, represented by the American Civil Liberties Union of Utah, filed suit arguing a federal court ruling was necessary to prevent a similar injunction from being implemented, and to compensate Lucero and McCubbin for being charged under the first injunction.

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