

Weber County loses bid to remove a judge for calling an attorney a 'liar'

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The Weber County attorney had accused a federal judge of calling him a liar, and asked that the judge be removed from handling a lawsuit over a now-defunct gang injunction.

That won't happen, as another federal judge issued a ruling this week that will keep Clark Waddoups on the case. Weber County Attorney Christopher Allred had asked that Waddoups, a U.S. district court judge, be sidelined, arguing in court papers that one of his recent ruling was a personal attack and showed a bias against him.

Waddoups was critical of Allred and the previous county attorney, Dee Smith, in an October order where he ruled the county violated the rights of two Ogden men who had been targeted by a controversial injunction that forbid Ogden Trece gang members from associating with each other in public.

In the ruling, Waddoups questioned Allred's and Smith's truthfulness when they asserted that county officials had kept no database of people they believed were gang members.

The judge wrote that a quick Google search brought up the county's website where Weber County jail officials outlined how they kept a documented list of gang members, and also pointed to testimony in a separate case that led him to believe a Weber County database existed. He questioned in his ruling whether Allred was "attempting to deceive the court" and questioned the county attorney's credibility.

But U.S. District Judge Ted Stewart decided that Waddoups' ruling did not show "favoritism or antagonism," which would require a recusal. He said that Allred was taking issue with the correctness of Waddoups' ruling — which should be addressed in an appeal, not an attempt to take Waddoups off the case.

"In reaching the conclusions he did," Stewart wrote, "Judge Waddoups was doing what judges do every day."

In the county's motion to disqualify Waddoups, Frank Mylar — the attorney representing Weber County — wrote that the federal judge's ruling was an attempt to defame the elected county attorney, knowing his words would be picked up by reporters.

"Several media outlets have clearly understood that Judge Waddoups is calling the county attorney a liar," Mylar wrote.

But Stewart ruled that Weber County was overstating its case, and it was not a "fair or accurate reflection" of Waddoups' ruling. He also noted that Waddoups offered Allred the chance to have an evidentiary hearing to clear up any misunderstanding — but the county has so far declined to take him up on the offer.

"Judge Waddoups made no finding that Mr. Allred or Mr. Smith lied or that they cannot be trusted," Stewart wrote.

"Instead, he pointed out evidence that he believed contradicted statements they had made, thereby creating a dispute of fact precluding summary judgment."

The American Civil Liberties Union of Utah, who represents the two men who brought the lawsuit, opposed Weber County's attempt to remove the judge from the case. The organization noted that Waddoups had at times made rulings that were favorable to Weber County, it wasn't until after this latest ruling that the county gave any indication that it believed Waddoups was biased.

The case will now move forward, though a trial date has yet to be scheduled.

The lawsuit centers around the injunction that set rules for Ogden Trece gang members concerning who they could be seen with in public, set a curfew and restricted alcohol consumption, among other rules. It was thrown out in 2013 after the Utah Supreme Court found the county did not properly serve summons to members of the gang.

Leland McCubbin and Daniel Lucero sued after the injunction was thrown out.

Waddoups sided with the men in a recent ruling, finding that the injunction did not include any way for people to challenge the government's assertions they were Ogden Trece gang members before they were subject to the restrictions.