

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 10, 2022
Original Proceeding District Court, Adams County, 2022CV30752	
In Re:	Supreme Court Case No: 2022SA256
Plaintiff: Adams County, Colorado through its Board of County Commissioners,	
v.	
Defendant: Adams County Treasurer and Public Trustee Lisa Culpepper.	
ORDER OF COURT	

Upon consideration of Petitioner Adams County Treasurer’s (the “Treasurer’s”) Petition Under C.A.R. 21 For Rule To Show Cause, the responses filed by Adams County (the “County”) and the District Court, and the Treasurer’s reply brief, and being sufficiently advised in the premises,

IT IS HEREBY ORDERED as follows:

1. The Rule to Show Cause issued by this Court on August 10, 2022 is made ABSOLUTE, and this case is remanded to the District Court for further proceedings consistent with this Order.

2. Given the unique facts and the lengthy procedural history of this case (and a related case filed by the County), the court concludes that the issues

raised by the petition are not amenable to providing broadly applicable guidance as to governing legal principles. Accordingly, the court chooses to resolve this case by order, emphasizing that the court's ruling is limited to the specific circumstances presented here.

3. The question presented is whether the County may initiate litigation against the Treasurer in her official capacity, use the County Attorney's Office to prosecute this litigation, and, at the same time, refuse to appropriate funds to allow the Treasurer, who, but for the conflict of interest, would be represented by the County Attorney's Office, to retain counsel to represent her.

4. As noted above, the constellation of facts presented here is unique: (1) the District Court ordered the County to appropriate funds to allow the Treasurer to retain outside counsel; (2) the District Court appointed a special master to review and approve the fees and costs incurred by the Treasurer as a result of her retention of outside counsel; (3) the County paid the outside counsel's fees and costs for approximately four months but then filed a "Motion for Clarification," asking the District Court to prospectively vacate any further award of fees and to order the Treasurer to return the fees that were previously paid; (4) the County stopped paying the Treasurer's fees and costs; and (5) in a related case filed by the County, the District Court, acting *sua sponte*, effectively reversed its prior order and declined to order payment of the Treasurer's

attorney fees, leaving the Treasurer with no means to retain counsel unless the Treasurer, who is being sued in her official capacity, personally does so.

5. On these facts, the court concludes that it was an abuse of discretion for the County to refuse to appropriate funds to allow the Treasurer to retain counsel and for the District Court to effectively affirm that determination.

6. In so ruling, the court notes that what it said long ago in *Wadlow v. Kanaly*, 511 P.22d 484, 487 (Colo. 1973), continues to apply today:

The present suit involved litigation between two public entities. The County Commissioners are represented by the County Attorney at no personal expense. . . . [W]hen the question of the respective powers of two governmental bodies is at issue, it would be inequitable to require one official, acting in [her] official capacity, to personally bear the burden of attorneys' fees and costs generated in the suit.

7. The court hastens to add, however, that this ruling should not be construed to afford the Treasurer a blank check for attorney fees and costs. Any fees and costs incurred must be reasonable, and the special master (or a new special master to be appointed by the District Court) shall continue to review such fees and costs for their reasonableness.

BY THE COURT, EN BANC, OCTOBER 10, 2022.