

DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED: December 20, 2022 4:09 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ANDERSON ALDRICH, Defendant	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Megan Ring, Colorado State Public Defender Joseph Archambault #41216 Chief Trial Deputy Michael Bowman #48652 Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: springs.pubdef@coloradodefenders.us	Case No. 21CR3485 Division 19
OBJECTION TO MOTION TO DISMISS AND NOTICE OF LAW	

Mx. Anderson Aldrich¹, by and through counsel, files this objection to the Sheriff's Motion to Dismiss the Second Verified Motion for Indirect Contempt, and in support states the following:

Procedural History

1. On December 8, 2022, Mx. Aldrich filed the verified motion to hold Bill Elder the Sherriff, as the head of the Sheriff's Department, in contempt for the actions of the Sheriff's Office. *See* Verified Motion to Hold Bill Elder, El Paso County Sheriff in Indirect Contempt of Court and Issue Citation to Show Cause, filed with Court 12/8/22. The Court stated that it wanted to read the pleading before taking any action.
2. On December 16, 2022, the Court contacted Mx. Aldrich and the Sheriff about setting a date for the show cause hearing in the end of January. Both the parties were available on the dates offered by the Court, and the Sheriff also asked to be heard on a legal matter before the show cause hearing. *See* attached email chain Exhibit A Show Cause Hearing- email chain between Court clerk and parties, 12/16/22.
3. Also on December 16, 2022, Mx. Aldrich filed an additional verified motion for contempt that laid out some of the same contemptuous conduct and additional conduct of the Sheriff's Office which bears on the issue of conduct done in violation of the Court's order and Colorado law. *See* Second Verified Motion to Hold Bill Elder, El Paso County

¹ Anderson Aldrich is non-binary. They use they/them pronouns, and for the purposes of all formal filings, will be addressed as Mx. Aldrich.

Sheriff in Indirect Contempt of Court and Issue Citation to Show Cause, filed with Court 12/16/22.

4. The Sheriff filed a Motion to dismiss the second verified motion for indirect contempt in the afternoon of December 19, 2022.
5. Due to some arguments made in the motion to dismiss, Mx. Aldrich is required to inform the Court of the applicable law.
6. In a footnote, the Sheriff seems to question whether “public defenders have the authority to prosecute this contempt proceeding,” citing to *Groves v. Seventeenth Judicial Dist.*, 806 P.2d 947, 948 (Colo. 1991) and *Vela v. Arapahoe Cnty. Dist. Ct.*, 664 P.2d 243, 245 (Colo 1983). Although this is a question not properly before this Court—see *Deines v. Atlas Energy Servs., LLC*, 2021 COA 24 n.2 (arguments in footnotes are waived and not properly before the court)—the Sheriff is clearly incorrect.
7. The scope of work done by the Colorado State Public Defender’s Office is governed by statute. C.R.S. § 21-1-104. Once the Public Defender’s Office has been appointed to represent a client, then the Public Defender’s Office is required to “prosecute any appeals or any other remedies before or after conviction that the state public defender considers in the interests of justice. *Id.* at (1)(b). However, the Public Defender’s Office may not be appointed by a trial court onto a case for the sole purpose of prosecuting a contempt citation. *Id.*; see also *Groves v. Dist. Ct. In & For Seventeenth Jud. Dist. Of State of Colo.*, 806 P.2d 947 (Colo. 1991)².
8. Even if this court were to incorrectly hold that the public defender cannot prosecute contempt under these circumstances, the decision is of little consequence – the public defender could then request the Court appoint a special prosecutor.
9. The Sheriff also seems to try to claim that because one of Mx. Aldrich’s attorneys signed the verification on the first contempt, that this someone means this attorney is a witness now. This is incorrect.
10. A request to a court to issue a contempt citation requires that the attorney comply with rule of civil procedure which is that every pleading must be signed by an attorney, except when it is otherwise specified that the pleading be verified by an affidavit, which contempt requires. See C.R. C.P. 11; C.R.C.P. 107 (c). Colorado law only requires verification by affidavit in limited circumstances. See . § 16-6-102 (motion for change of venue requires one or more affidavits); § 16-6-201(3) (motion to disqualify judge requires two affidavits).
11. The Colorado Supreme Court addressed this Sheriff’s claim about an attorney cannot be the affiant in the context of the motion to disqualify a judge and held clearly that nothing foreclosed the attorney from acting as the affiant in that situation. *People v. Botham*, 629 P.2d 589, 596 (Colo. 1981).

² The Sheriff seems to have cited to *Groves* incorrectly, as the holding is just as stated. The Public Defender cannot be appointed by a trial court to prosecute contempt, but the Public Defender may pursue contempt on behalf of a client the Public Defender already represents.

12. This claim is also refuted by the many reported Colorado Appellate Cases where the affiant was an involved attorney in the case. *See Wyatt v. People*, 28 P. 961 (Colo. 1892) (Deputy District Attorney) *People v. News-Times Pub. Co.*, 35 Colo. 253, 254, 84 P. 912, 913 (1906) (Deputy Attorney General); *Knox v. Knox*, 517 P.2d 1350, 1351 (Colo. App. 1973) (divorce case where one of the parties filed a motion for contempt against the other party, with no mention of impropriety); *See also People v. Tyer*, 796 P.2d 15, 17 (Colo. App. 1990) (even though there was not strict compliance with a motion and affidavit, the court's resulting citation sets forth sufficient details of the nature of the defendant's contemptuous conduct to provide her with adequate notice of the purpose of the hearing and to understandingly shape her course and prepare her defense.).
13. The Sheriff's motion then goes on in the rest of the pleading seemingly to assert its defenses in advance of the show cause hearing. This is inappropriate at this time. The Court is issuing a show cause, and trying to set the hearing on that issue.
14. At the time of the hearing the Sheriff's Office is allowed to appear and defend themselves. *See Losavio v. Dist. Ct. . In & For Tenth Jud. Dist. Of State of Colo.*, 512 P.2d 266 (1973); *People v. Lockhart*, 699 P.2d 1332, at 1336 (Colo. 1985). However, it is inappropriate to file a motion beforehand and try to assert their factual defenses by pleading as a way to circumvent the contempt procedures under Colorado law.

WHEREAS, Mx. Aldrich, through undersigned counsel and pursuant to C.R.C.P. 107, respectfully moves the Court to set a hearing and issue a citation to show cause to Bill Elder, Sheriff of El Paso County Sheriff's Office, to appear before the Court and explain why his and his office should not be held in indirect contempt. Mx. Aldrich objects to the remote appearance of any party at any show cause hearing held pursuant to this motion.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Joseph Archambault #41216
Chief Trial Deputy



Michael Bowman #48652
Deputy State Public Defender

Certificate of Service

I certify that on December 20, 2022, I served the foregoing document via email to the Court's clerk and to opposing counsel.

s/ jarchambault

Dated: December 20, 2022