In Re the Matter of: Colorado Springs City Counsel, (sic) Claimant**,** v. Helen Collins, Respondent. _____ Helen Collins 632 Lakewood Circle Colorado Springs CO 80910	JAG Case No. : 2015-1169A

MOTION TO DECLARE HEARING OFFICER APPOINTMENT VOID

Defendant moves the hearing officer declare the appointment of Boyd N. Boland void. This motion is based on the incontrovertible fact that Boyd Boland was NOT PUBLICLY APPOINTED by the Council. Only the Council has the power to appoint a hearing officer in an ethics proceeding. Even Boland's October 7th order, page 1, quotes resolution 58-13, section 5, which says, "...City Council will elect, in its sole discretion, to either serve as the hearing body or appoint a hearing officer to conduct the proceedings." COUNCIL TOOK NEITHER ACTION.

Respondent moved to disqualify the hearing officer for that and other reasons. The hearing officer's "order" was only on the issue of bias, not appointment. He said "my appointment will be addressed separately after an opportunity to respond has been afforded." That is an open-ended delay. It is always timely to raise the issue of lack of jurisdiction. The case cannot go forward until his legal jurisdiction is settled.

The hearing officer defended his neutrality with a counter-assertion which is not allowed in a motion to disqualify. That is a nullity, and discouraged, if not illegal. See prior motion and page 11 of the latest “order,” which cites the Klinck case.

Since no evidence of the hearing officer's alleged secret appointment was presented, it is clear the Council did not publicly appoint him. Even if a backdated or otherwise falsified appointment document is presented, it was not passed in public by the Council as required by law, including city law and the state Open Meetings law that apply to the Council's actions.

Boland invents a requirement that it is the duty of respondent to preserve a record at respondent's expense. Respondent has a due process right to appeal any adverse decision in this sham proceeding. A transcript of the proceedings is needed for an appeal. Respondent does not have to pay for his due process rights; it is the duty of government to provide them to respondent at governmental expense.

Boland also says respondent must prove in advance how many people will attend this meeting, which the City admits must be open to the public; that is absurd.

Boland also requires respondent to provide an alternate public location, though respondent is not in control of any public building. Boland has not even stated in writing the dimensions of the private cubicle at which he says this public meeting must be held, nor even that he would personally attend his own meeting from Paonia.

Boland's acts reject his duty of law and common courtesy to hold a setting conference, which is standard in Colorado judicial proceedings, before picking a date convenient to the parties. Respondent is unable to attend on November 12.

Boland altered the caption, which contains the delusional statement, “COURT USE ONLY,” as though he thinks he is acting as a lawful court. No motion was made by the claimant to correct its the title. Listing his private company where a court's name and address belong is another misleading act by Boland.

Boland's “order” indicates he believes due process rights are alterable, based on whether or not respondent hires an attorney to appear. That is a non-recoverable expense that would serve as a fine or cost to respondent, regardless of the outcome.

Boland believes he can order respondent to meet with her accusers to fashion the rules for the hearing. The U.S. Constitution (Article I, section 9) prohibits *ex post facto* laws. The state constitution, Article II, section 11, prohibits not only that, but any law “retrospective in its application.” That means rules cannot be applied to events occurring before the rule was adopted. This is in our Bill of Rights and applies to all political subdivisions of the state. What the general assembly cannot do at the state level in this regard, a city council cannot do in municipal affairs. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959). Respondent is not an attorney and would be at a severe disadvantage in having the hearing rules drafted by her persecutors, who have attorneys (and Boland) paid by taxpayers.

Boland orders respondent to serve documents on "all other parties." His own certificate of service shows his confusion about this case, in that it lists respondent, an attorney for the Council, an attorney for the Independent Ethics Commission, and the president (only) of the Council. The only other party in this case is the City "Counsel" (sic). Respondent does not know whether that means "Counsel" as in attorney-representative, or Council, as in the nine members of the legislative body, including respondent. The "order" is unintelligible and lacks proper notice. It thus violates due process and is void for that reason as well.

Boland shows his ignorance of motions to disqualify by requiring them to be served on other parties. The motion is privileged and does not allow pleadings by other parties, just like the self-serving denial of bias Boland inserted in his "order."

Boland must accept all factual statements in the affidavit as true. His "order" admits that at the top of page 5. He did not do so, but instead claimed he is (lawfully) appointed as hearing officer, while deferring ruling on his appointment (?) His action to continue as hearing officer delays the case to collect $450 per hour for his illegal appointment. The affidavit required him to treat it as illegal, and so itself required recusal. He did not, further evidence his interest here is personal gain, not legality, nor justice for respondent. He is in the business of posing as a judge, legal or not.

On page 8, Boland says "I have not yet considered or ruled on my jurisdiction to proceed." Determining jurisdiction is the FIRST duty of any judge. He is issuing

“orders,” so he has necessarily found he has jurisdiction, but won't rule on that even after respondent brought it to his attention. This is a slam dunk case of an illegal appointment. Boland even quoted his jurisdictional deficiency on page 1 of his prior “order” in this case. Once he has been cornered by an appellate court or otherwise, he will have to concede his lack of jurisdiction, but keep his illegal payments. His waste of time and illegal “orders” also deprive respondent of due process of law.

Boland says he “will consider it (the motion) after all parties have had an opportunity to be heard on the issue.” Once again, there are only TWO parties (see the caption). He gives another open-ended delay for those responses by unidentified parties, but shows he will continue acting as hearing officer pending that indefinite discussion on which his actions show he has already made a de facto ruling. . He violates standard judicial practice of setting deadlines for pleadings.

Contrary to Boland's attack on respondent on page 8, respondent DID contend in detail the November 12 proceeding will not be effectively open to the public.

Because of the obvious lack of jurisdiction, all “orders” by Boland are void. Issuance of orders void for lack of jurisdiction is the grossest example of bias. Cases cited by Boland do not say otherwise.

WHEREFORE, respondent moves Boland reconsider and grant respondent's first motion to disqualify, and that Boland also find he has a lack of jurisdiction

based on his illegal appointment, as described by the hearing officer himself on page one of his prior “order,” as detailed in the first paragraph of this motion. His recusal must be made promptly and in writing.

Submitted,

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