

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02072-RM-KLM

ARNOLD A. CARY,

Plaintiff,

v.

RODNEY ACHEN, CTCF, Food Services Captain,

Defendant.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendant's **Motion to Disqualify Attorney General** [#95] (the "Motion"). Plaintiff seeks the "immediate disqualification of the Colorado Attorney General and the office's subordinate Deputy Attorney General from acting as defense counsel" in this matter because "the Attorney General is part of the Executive Branch" and "Plaintiff's complaint clearly alleges a conspiracy up to and including the Executive Branch." As Defendant more fully explains in the Response, "[t]he Colorado Attorney General has a statutory duty to defend employees of the State of Colorado when they are sued for acts arising out of the performance of their official duties." [#97] at 2 (citing Colo. Rev. Stat. § 24-31-101(4)). "As an employee of a state agency, the Defendant is entitled to representation in the defense of any action arising out of the performance of his duties and within the scope of his employment, unless his conduct was willful and wanton, provided that the employee cooperates in his defense." *Response* [#97] at 2 (citing Colo. Rev. Stat. §§ 24-10-110(1), 24-10-118(1)). Examining the remaining claim in this action, the Court finds that Plaintiff has alleged that Defendant was acting within his scope as an employee of the Colorado Department of Corrections, and thus no basis exists for the disqualification of the Colorado Attorney General. The Court also notes that all claims based on an alleged conspiracy within the Executive Branch have been dismissed from this lawsuit. *See Order* [#81]. Accordingly,

IT IS HEREBY **ORDERED** that the Motion [#95] is **DENIED**.

Dated: July 30, 2015