

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-00411-PAB-NYW

ARNOLD A. CARY,

Plaintiff,

v.

JOHN W. HICKENLOOPER, Governor,
RICK RAEMISCH, Executive Director,
JAMES FALK, Warden SCF,
MUARICE FAUVEL, D.O. Physician's Assistant,
KERI MCKAY, P. A., SCF Physician's Assistant,
KELSEY PRUSHA, also known as Kelsey Dellinger, R.N. S.C.F,
KEVIN VORWALD, Captain, SCF,
UNKNOWN FIRST NAME PAGE, Lieutenant, SCF
UNKNOWN FIRST NAME MOON, Lieutenant, SCF,
UNKNOWN FIRST NAME LUECK, Case Manager, SCF, and
UNKNOWN FIRST NAME HERREA, Case Manager, SCF

Defendants.

MINUTE ORDER

Entered by Magistrate Judge Nina Y. Wang

This matter comes before the court on Plaintiff's Motion to Disqualify Attorney General ("Motion to Disqualify") [#45], filed on March 4, 2015. Plaintiff seeks disqualification of the Attorney General, because "Plaintiff has linked Defendants, because the Attorney General is part of the Executive Branch, wrong acts cited in the complaint is akin to allowing a fox to defend a fox in the matter of the hen house robberies. A clear conflict of interest exists." [*Id.* at 1]. Plaintiff argues that the Attorney General has "no right to act as defense counsel for the executive, nor chief law officer." [*Id.* at 2]. Plaintiff further contends that "no license exists authorizing the Office of the Attorney General to practice law." [*Id.*]. In Response, Defendants assert that the Colorado Attorney General has a statutory duty to defend state employees sued for acts arising out of the performance of the employee's official duties. [#55 at 2-3]. COLO. REV. STAT. § 24-31-101(4). As previously pointed out to Plaintiff in *Cary v. Achen*, Civil Action No. 12-cv-02072-RM-KLM, Defendants, as employees of the Colorado Department of Corrections, are entitled to representation in the defense of any action arising out of the performance of her or his duties, unless her or his conduct was willful and wonton, provided that the employee

cooperates in her or his defense. COLO. REV. STAT. §§ 24-31-110(1) and 24-10-118(1). To the extent that it can survive the pending Motion to Dismiss, review of the Amended Complaint indicates that Plaintiff's allegations directed at Defendants arise from the performance of their official duties for the Colorado Department of Corrections. [#11]. There are no allegations by Plaintiff that any Defendant was acting outside the scope of her or his employment. [*Id.*]. In addition, there is no indication that the Attorney General seeks to withdraw from representation based on any lack of cooperation by any Defendant. Therefore, there is no basis for disqualifying the Attorney General from representing Defendants in this action. Accordingly, IT IS ORDERED that Plaintiff's Motion to Disqualify Attorney General is DENIED.

DATED: August 10, 2015