

Weber County attorney wants judge removed from Ogden Trece gang case for calling him a 'liar'

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The Weber County attorney is firing back after a federal judge recently questioned whether he told the truth in a lawsuit over a now-defunct gang injunction.

Christopher Allred is asking that U.S. District Judge Clark Waddoups be taken off the case, arguing in court papers that Waddoups' recent ruling was a personal attack and showed a bias against him.

Waddoups was critical of Allred and the previous county attorney, Dee Smith, in a recent order where he ruled the county violated the rights of two Ogden men who had been targeted by a controversial injunction that forbid Ogden Trece gang members from associating with each other in public.

In the ruling, Waddoups questioned Allred's and Smith's truthfulness when they asserted that county officials had kept no database of people they believed were gang members.

The judge wrote that a quick Google search brought up the county's website where Weber County jail officials outlined a process in which they kept a documented list of gang members, and also pointed to testimony in a separate case that led him to believe a Weber County database existed. He questioned in his ruling whether Allred was "attempting to deceive the court."

"The court has reason to question Chris Allred's credibility," Waddoups wrote. "The court cannot, at this time, take Mr. Allred at his word that he will not seek a substantially similar injunction."

Frank Mylar, the attorney representing Weber County in the lawsuit, wrote in a motion to disqualify Waddoups that the judge attempted to defame the elected county attorney, knowing his words would be picked up by reporters. "Several media outlets have clearly understood that Judge Waddoups is calling the county attorney a liar," Mylar wrote.

Allred wrote in an affidavit that he believes it was inappropriate for the judge to have "independently investigated" the facts of the case. And Smith, in his own affidavit, wrote that he believed Waddoups ruling was an attempt to negatively impact his role as a prosecutor.

"I have no faith that I will ever achieve justice from this judge," Smith wrote.

Smith had been the county attorney when the gang injunction was in place. He left his position as county attorney to be a justice court judge, but eventually returned to the Weber County attorney's office to prosecute gang crimes.

The American Civil Liberties Union of Utah, who represents the two men impacted by the injunction, said it will oppose Weber County's attempt to remove the judge from the case.

The lawsuit centers around the injunction that set rules for Ogden Trece gang members concerning who they could be seen with in public, set a curfew and restricted alcohol consumption, among other rules. It was thrown out in 2013 after the Utah Supreme Court found the county did not properly serve summons to members of the gang. Leland McCubbin and Daniel Lucero sued after the injunction was thrown out.

Waddoups sided with the men in a recent ruling, finding that the injunction did not include any way for people to challenge the government's assertions they were Ogden Trece gang members before they were subject to the restrictions.

Instead, Ogden police officials kept a private database of people they believed were gang members based on things like how they dressed, their tattoos and who they associated with. Alleged gang members had to meet just two items on a list of criteria — which did not necessarily include being convicted of any crimes — before police considered them Ogden Trece members and sought to restrict their movements.

The inability to challenge this determination, Waddoups said, amounted to a violation of the men's due process rights. McCubbin has said he left the gang two years before the injunction began. Lucero said he never was a member.

Ogden City settled its portion of the case with McCubbin and Lucero in 2018, but the lawsuit against Weber County has been ongoing. And though it was clear that Ogden police kept a gang database, Allred and Smith have asserted in court papers that county employees never did.

No court hearings has been set yet, and Waddoups has forwarded the motion to disqualify him to the presiding judge for consideration.