

Weber County attorneys broaden criticism of judge's perjury insinuations in gang injunction case

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Standard-Examiner

Nov 25, 2019

Link: https://www.standard.net/police-fire/weber-county-attorneys-broaden-criticism-of-judges-perjury-insinuations-in-gang-injunction-case/article_61633081-9277-570b-80d1-1a4f330c44ac.html

About 15 people met in front of the Ogden Municipal Building on Saturday, Nov 14, 2015, to speak out against the Ogden gang injunction. The injunction placed legal restrictions on alleged Ogden Trece gang members. It was overturned by the Utah Supreme Court, but local officials are discussing introducing a new injunction.

SALT LAKE CITY — Weber County has amplified its efforts to disqualify U.S. District Judge Clark Waddoups from hearing a lawsuit over the Ogden gang injunction after the jurist questioned County Attorney Chris Allred's honesty.

Waddoups recently implied in a memorandum decision that Allred and his predecessor as county attorney, Dee Smith, lied in declarations about whether the county kept data on local gang members.

The question of gang lists arose earlier in the America Civil Liberties Union of Utah's lawsuit against the constitutionality of the 2010 gang injunction.

The two Ogden men represented by the ACLU, Leland McCubbin Jr. and Daniel Lucero, among other things petitioned to have their names removed from law enforcement gang databases.

The Ogden Police Department has kept an extensive gang database, but in 2018 court declarations, Allred and Smith said Weber County had no gang database.

Waddoups, the county said in a new court document filed Tuesday, "does not merely point to what might reasonably be seen as contradictory information ... rather, (he) makes a special point to repeatedly emphasize that the declarations were submitted 'under penalty of perjury.'"

"The court does not say, 'the court has obtained ... information that appears to be inconsistent with Mr. Allred's representations, and hereby orders a hearing to resolve the apparent discrepancies,'" an attorney representing the county, Frank Mylar, wrote. "Instead, without providing an opportunity to respond, the judge strongly implies that Allred must simply be lying."

Waddoups had seized on testimony given in an unrelated case by a former Weber County Jail deputy who said jailers kept notes on gang members. The judge said that cast doubt on what Allred and Smith had declared.

In follow-up declarations the two attorneys objected strongly to Waddoups' insinuations. They said they had not been aware that some jail personnel kept notes about gang members in the jail so they could keep rival gangs separated in the cellblocks, a routine security measure.

Within that context, Mylar wrote, “it is very evident that the judge is calling Allred a liar — all based on tenuous ... information and easily disprovable assumptions. At the very least this must create the appearance of bias, and so the judge should be recused.”

In an interview last week, Allred remained angry about the allegations by Waddoups.

“Obviously, I think he’s up in the night, personally,” Allred said. “I really got gang-raped on this thing.”

Another federal judge, Robert Shelby, will rule on whether Waddoups will be removed from the gang injunction case.

The Weber County Attorney’s Office, working with the Ogden Police Department, filed the public-nuisance injunction against the Trece gang in 2nd District Court in 2010 after the authorities cited escalating gang-related crime in the city.

After the Utah Supreme Court threw out the injunction in 2013, the ACLU filed suit in 2015, asserting that McCubbin and Lucero were unjustly convicted of violating the invalidated injunction.

Waddoups ruled Sept. 27 the county violated the pair’s constitutional due process rights and that they may seek monetary damages at trial.

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