

**BEFORE THE SECRETARY OF STATE  
STATE OF COLORADO**

**CASE NO. OS 2003025**

---

**ORDER DENYING MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES**

---

**IN THE MATTER OF THE COMPLAINT FILED BY THOMAS GRAHAM REGARDING ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT BY THE ARVADA FIRE PROTECTION DISTRICT, BOB DYER, BOB FREI, ED THOMLINSON, DOUGLAS SCHNEIDER, JOSEPH DOMENICO, CITIZENS FOR A SAFE ARVADA and BRUCE A. ROOME,**

**Defendants.**

---

**Background**

This case concerns a complaint alleging violations of the Colo. Const. art XXVIII regarding campaign and political finance. On October 21, 2003, the Complainant, Thomas Graham, filed his complaint with the Secretary of State. On October 22, 2003, the matter was forwarded to the Division of Administrative Hearings ("Division") as required by Colo. Const. art XXVIII, section 9(2)(a). Also as is required by section 9(2)(a), a hearing was scheduled within fifteen days: on November 6, 2003.

On October 31, 2003, Complainant sought a continuance, as he believed persons acting for the Defendants were seeking to intimidate him. On November 3, 2003, Complainant again sought a continuance because the attorney he had contacted to represent him was unavailable. On November 5, 2003, counsel for the Defendants objected to the continuance.

On November 5, 2003, Complainant withdrew his complaint. On November 6, 2003, the undersigned issued a Final Agency Order dismissing this case.

On February 10, 2004, Complainants filed a Motion for an Award of Attorneys' Fees, Costs and Expenses. On February 23, 2004, the Complainant filed a document in response with the Secretary of State. From the document it appears that Complainant regards it as something less than an "official response to the motion." Complainant asks the Secretary of State if he should provide such an "official response." It appears that Complainant has not copied the Defendants on this document. Consequently, the Administrative Law Judge ("ALJ") forwards a copy of this document to Defendants with this order.

On February 25, 2004, the Secretary of State forwarded Complainant's document to the Division.

## Discussion and Order

The ALJ is unaware of any appeal of his November 6, 2003 Final Agency Order and so he retains jurisdiction to entertain this motion. *Molitor v. Anderson*, 795 P.2d 266 (Colo. 1990).

Defendants' Motion for an Award of Attorneys' Fees, Costs and Expenses alleges that Complainant's complaint was filed for the purpose of serving Complainants' personal political agenda and that Complainant knew that it lacked substantial justification. Defendants seek leave to show through a bill of fees and costs the expenses made to defend this action. The only authority cited by Defendants is Section 13-17-102, C.R.S.

Section 13-17-102 is limited to "civil actions" in "courts of record." See Sections 13-17-101 ("the general assembly hereby sets forth provisions for the recovery of attorney fees in courts of record"), 13-17-102(1) (court may award attorney fees subject to the provisions of this section "in any civil action ... commenced or appealed in any court of record in this state") and Section 13-17-102(2) (subject to limitations elsewhere in this article, "in any civil action ... commenced or appealed in any court of record in this state, the court shall award ... reasonable attorney fees against any attorney or party who has brought or defended any civil action ... that the court determines lacked substantial justification"). The current proceeding is an administrative, not a civil, action. In addition, the ALJ is not a court of record. Section 13-1-111, C.R.S. (2002).

Defendants cite no other authority for the assessment of attorney fees. Consequently, the Motion for an Award of Attorneys' Fees, Costs and Expenses is denied.

## DONE AND SIGNED

March \_\_\_\_\_, 2004

---

MATTHEW E. NORWOOD  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I have mailed a true and correct copy of the above **ORDER DENYING MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Bruce A. Roome  
7049 Upham St.  
Arvada, CO 80003

Dino Ross  
1675 Broadway, Suite 2600  
Denver, CO 80202

Thomas Graham  
6080 Routt Street  
Arvada, CO 80004

and to

William A. Hobbs  
Deputy Secretary of State  
Department of State  
1560 Broadway, Suite 200  
Denver, CO 80203

on this \_\_\_\_ day of \_\_\_\_\_, 2004.

---

Secretary to Administrative Law Judge