

<p>DISTRICT COURT, WELD COUNTY, COLORADO  P.O. Box 2038  Greeley, Colorado 80632</p> <hr/> <p><b>Plaintiff(s):</b> Tori McMechan</p> <p><b>Defendant(s):</b> Town of Nunn and Board of Trustees of the Town of Nunn</p> <hr/> <p>Attorney for Plaintiff  Mark Cohen  The Cohen Law Group  A Professional Corporation  110 Snyder Street, 2<sup>nd</sup> Floor  PO Box 617  Nederland, CO 80466  Phone Number: (303) 258-0561  E-mail address: mark@cohenslaw.com  Atty. Reg. #: 13178</p>	<p>EFILED Document – District Court  2010CV219  CO Weld County District Court 19th JD  Filing Date: Mar 6 2010 5:45PM MST  Filing ID: 29918706</p> <p><b>▲ COURT USE ONLY ▲</b></p> <p>Case Number:</p> <p>Div.:                      Ctrm.:</p>
<p><b>COMPLAINT</b></p>	

Plaintiff, for her Complaint, alleges as follows:

**PARTIES**

1. Plaintiff, Tori McMechan, resides at 408 Garfield Avenue, Nunn, Colorado 80648.

2. Defendant Town of Nunn (“Town”) is and was at all times relevant a Colorado statutory town with its principal office at its Town Hall at 185 Lincoln Avenue, Nunn, Colorado 80648.

3. Defendant, Board of Trustees of the Town of Nunn (“Board”) is and was at all times relevant to this action the body in which the legislative and corporate authority of the Town is vested. § 31-4-301, C.R.S. The Board’s principal address is 185 Lincoln Avenue, Nunn, Colorado 80648.

**JURISDICTION AND VENUE**

4. The Court has personal jurisdiction over the parties because Plaintiff resides in Weld County and the Town is situated entirely in Weld County.

5. The Court has subject matter jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution and pursuant to the statutes and rules cited herein.

6. Venue is proper pursuant to C.R.C.P. 98 because the facts giving rise to all claims set forth herein took place in Weld County.

#### **GENERAL ALLEGATIONS**

7. Prior to February 4, 2010, Plaintiff served as the appointed Town Clerk, Town Treasurer, and Court Clerk for the Town.

8. At all times relevant to this action the Town had adopted a municipal code known as the Nunn Municipal Code ("NMC").

9. At all times relevant to this action the NMC provided in relevant part:

**2.08.040 Removal from Office - Grounds.** Any town officer appointed by the Board who is incompetent or who is guilty of any willful violation of any of his/her official duties, may be removed from office, during his/her term of office, by a vote of a majority of all members elected to the Board.

**2.08.050 Removal from Office - Notice.** All charges preferred against any appointive officer shall be made in writing and shall clearly specify the cause or causes for removal. A copy of such charges, together with a notice of the time and place of hearing, shall be served upon the accused at least five (5) days prior to the date set for the hearing.

**2.08.060 Removal from Office - Hearing.** At the time and place set for the hearing, the Board shall meet and proceed according to its rules to hear the evidence against the accused, as well as the evidence offered in his/her behalf, adjourning from time to time as may be necessary, until all of the evidence has been heard. At the hearing, the accused may be heard by himself/herself or through counsel.

10. On January 29, 2010, the Town served a Notice of Hearing on Plaintiff that summarized certain allegations against Plaintiff and notified her that a hearing concerning those charges would be held on February 4, 2010.

11. The Notice of Hearing referred to Exhibits A-1 through M, but these exhibits were not served on Plaintiff on January 29, 2010.

12. The Notice of Hearing also contained a footer indicating that it contained a total of six pages, but the Notice of Hearing served on Plaintiff consisted of only three pages.

13. On February 1, 2010, and again on February 2, 2010, Plaintiff asked the Town to provide her with copies of the exhibits referred to in the Notice of Hearing and to provide

the missing pages of the Notice of Hearing, and to postpone the hearing so she and her counsel could prepare for it.

14. The Town denied Plaintiff's request to postpone the hearing, and did not provide her with the exhibits until 3:56 p.m. on February 3, 2010. When the Town did provide the exhibits it included exhibits N through S - exhibits not referred to in the Notice of Hearing.

15. At no time relevant to this action did the Defendants have rules governing the conduct of removal hearings.

16. A hearing took place before the Board on February 4, 2010, at which time Plaintiff and her counsel were present.

17. The attorney representing the Town and prosecuting the case against Plaintiff attempted to call Plaintiff as the Town's first witness. Plaintiff refused to testify, invoking the 5<sup>th</sup> Amendment and also insisting that under the NMC she had a right to hear the Town's evidence against her first and then present rebuttal evidence. In view of Plaintiff's refusal to testify during the Town's case-in-chief, the Board ruled that it would not allow her to testify at all and would not allow her to testify after the Town had presented its case against her.

18. At the conclusion of the hearing the Board voted to removal Plaintiff from her offices.

19. The Defendants' failure to provide proper notice of the allegations, as set forth herein, their failure to postpone the hearing, and their failure to allow Plaintiff to testify to rebut the charges, severely impacted Plaintiff's ability to prepare for the hearing and deprived her of a fair hearing.

20. In conducting the hearing the Board was acting for the Town in a judicial or quasi-judicial function.

21. The Board exceeded its jurisdiction and/or abused its discretion in one or more of the following ways:

a. Failing to provide a Notice of Hearing as required by the NMC by failing to provide the exhibits referred to in the Notice of Hearing until the day before the hearing;

b. Failing to provide pages 4 through 6 of the Notice of Hearing as the footer indicated the Notice of Hearing consisted of six pages;

c. Serving exhibits on the Plaintiff the day before the hearing that were not referred to in the Notice of Hearing;

d. Failing to provide Plaintiff with a notice that clearly specified the causes for removal;

- e. Failing to grant Plaintiff's request to postpone the hearing;
- f. Refusing to allow Plaintiff to testify after the Town presented its case-in-chief;
- g. Conducting a hearing although it had not adopted rules for the conduct of such hearings as required by Section 2.08.060 of the NMC;
- h. Making an implied finding that Plaintiff was incompetent;
- i. Making an implied finding that Plaintiff has committed willful violations of the NMC;
- j. Considering allegations of conduct that were not violations of Plaintiff's official duties.

22. Plaintiff has no plain, speedy and adequate remedy at law.

23. The Town is responsible for the actions of the Board.

WHEREFORE, Pursuant to C.R.C.P. 106(a)(4), Plaintiff seeks a determination that the Board exceeded its jurisdiction and abused its discretion, for costs and attorney's fees to the extent allowed by law, for an Order reinstating her to her appointed offices, and for such other relief as the Court deems just.

THE COHEN LAW GROUP  
A Professional Corporation

*The signed original document is kept  
in the Nederland office of The Cohen Law  
Group, A Professional Corporation.,  
as required by C.R.C.P. 121 §1-26(9)*

s/ Mark Cohen

Mark Cohen - # 13178  
ATTORNEY FOR PLAINTIFF