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COLORADO SUPREME COURT  
Court address: Ralph L. Carr Judicial Center  
1300 Broadway  
Denver, CO 80203

District Court, Denver County, Colorado  
The Honorable Judge Shelley Gilman

Case No. 21CV000091

IN RE:

**PETITIONERS:**

Benjamin Wegener, Younge & Hockensmith, P.C., and  
Wegener, Scarborough, Younge & Hockensmith, LLP; and  
The Aspen Mountain Condominium Association

v.

**RESPONDENT:**

Robert A. Francis

Attorneys for Petitioner The Aspen Mountain  
Condominium Association:  
Stuart D. Morse, #16978  
Matthew J. Bayma, #41464  
Stuart D. Morse & Associates, LLC  
5445 DTC Parkway, Suite 250  
Greenwood Village, CO 80111  
Telephone: 303-996-6661  
Facsimile: 303-996-0908  
[smorse@sdmorselaw.com](mailto:smorse@sdmorselaw.com)  
[mbayma@sdmorselaw.com](mailto:mbayma@sdmorselaw.com)

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Case Number: 2021SA147

**THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION'S REPLY IN SUPPORT  
OF PETITIONERS' MOTION TO SHOW CAUSE PURSUANT TO C.A.R. 21**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply complies with all requirements of C.A.R. 21 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g)

- It contains 1917 words.

I acknowledge that my Reply may be stricken if it fails to comply with any of the requirements of C.A.R. 21 and C.A.R. 28 and C.A.R. 32.

Respectfully submitted,

STUART D. MORSE & ASSOCIATES, LLC

Dated: July 7, 2021

By: /s/Matthew J. Bayma

Stuart D. Morse, #16978

Matthew J. Bayma, #41464

Attorneys for Petitioner The Aspen Mountain  
Condominium Association

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## INTRODUCTION

Robert A. Francis' vexatious use of the legal system to harass Aspen Mountain Condominium Association ("AMCA") is harmful to litigants and the Courts. The only way to stop Mr. Francis' endless frivolous and groundless filings is to stop him from filing *pro se* cases in the state, as advocated in the underlying petition. AMCA joins in that request.

## AUTHORITY

*Board of County Com'rs of Morgan County v. Winslow*, 862 P.2d 921 (Colo. 1993) is directly on point. In *Winslow*, the Board of County Commissioners, individual commissioners, the Morgan County Treasurer and several attorneys filed nearly the exact same petition that Benjamin Wegener and Younge & Hockensmith, P.C. filed here after Rainsford Winslow attempted to repeatedly collaterally attack a decision by Morgan County officials. The vast majority of Mr. Winslow's actions were summarily dismissed for failures to comply with procedural requirements, failing to allege cognizable claims, or collateral attacking the underlying decision. *See id.* at 921.

In *Winslow*, this Court held that the right to access Colorado courts of justice is a right with limits. *See id.* at 923; citing *People v. Dunlap*, 623 P.2d 408, 410 (Colo. 1981). "The right of self-representation in civil suits must in a proper case

yield to the principle that ‘right and justice should be administered without sale, denial or delay.’” See *id.* quoting Colo. Const. Art. II, Sec. 6. The principle of justice “is imperiled when a party appearing pro se pursues myriad claims without regard to relevant rules or procedural and substantive law. This conclusion follows from recognition of the fact that opposing litigants must bear the expense of defending against meritless claims, and citizens in general suffer the hardships brought about by increased court costs, crowded dockets, and the unreasonable delay and confusion that accompany a disruption of proper judicial administration.” See *Winslow*, 862 P.2d at 923-924; citing *Board of County Comm’rs of Morgan County v. Winslow*, 706 P.2d 792 (Colo. 1985); *Board of County Comm’rs for the County of Weld v. Howard*, 640 P.2d 1128 (Colo. 1982); *Dunlap*, supra; *Board of County Comm’rs for the County of Boulder v. Barday*, 594 P.2d 1057 (Colo. 1979); *People v. Spencer*, 524 P.2d 1084 (Colo. 1974); and *Shotkin v. Kaplan*, 180 P.2d 1021 (Colo. 1947).

When faced with these extreme situations, this Court “has both the duty and the power to protect courts, citizens and opposing parties from the deleterious impact of repetitive, unfounded pro se litigation, and on several occasions we have deemed it necessary to enjoin an individual from proceeding pro se as a plaintiff in any present or future litigation in the state courts of Colorado.” *Winslow*, 862 P.2d

at 924. The Court makes its decision by balancing a litigant’s right to access courts against the interests of other litigants and the general public in protecting judicial resources from repetitious and baseless *pro se* litigation. *Id.*

### **ANALYSIS**

The balance here weighs conclusively in favor of prohibiting Mr. Francis from appearing *pro se* in any present or future cases in Colorado. Mr. Francis’ problem with AMCA originates from certain assessments on a unit Mr. Francis owned or had an interest in in 2010. The unit sold in 2018 and the assessments were fully satisfied on July 30, 2018. AMCA subsequently filed and recorded a satisfaction of judgment. Other than these endless filings, the relationship between Mr. Francis and AMCA no longer exists. AMCA has no way to seek recourse for Mr. Francis’ groundless filings.

Mr. Francis fully admits and acknowledges that the 28 cases filed since 2010 are collateral attacks of a 2010 Pitkin County Case. See Answer Brief, pg. 5, wherein Mr. Francis refers to this case as a “follow up.” Mr. Francis had every opportunity to adjudicate and appeal that case and he attempted to do so multiple times. *See App. 55 and 61.* Mr. Francis had every opportunity to advance his theory that a certain vote was improper, certain payments were inappropriately applied, and that certain representations made at a Court of Appeals oral argument

were untrue. He did just that after the case was remanded on the first appeal and the Trial Court Judge found Mr. Francis' testimony "not credible" and "self-serving." *See* Answer Brief, pg. 15. Mr. Francis had his shot and he took it.

Instead of accepting his loss, he harasses everyone involved in the case because he believes he has nothing to lose. The following displays Mr. Francis' vexatious tactics that he believes he can file with impunity:

- A C.R.C.P. 60 filing, wherein Mr. Francis claims the attorney fee awards Ordered against him trusts he has interest in are uncollectable. Appendix 1.
- Over 28 cases filed as detailed in the underlying request to show case. Even more telling and disturbing, many of the cases are filed and then abandoned.
  - In Denver District Court Case 2021CV139, AMCA filed a motion to dismiss and Mr. Francis never filed a response.
  - In Denver District Court Case 2021CV91, AMCA filed a motion to dismiss and Mr. Francis never filed a response.
  - In Pitkin District Court Case 2020CV030005, Mr. Francis attempted to voluntarily dismiss certain claims, presumably to avoid a motion to dismiss. *See* Opposition to Plaintiffs' Dismissal By Notice Without Prejudice of Defendant Cummins and Krulewitch Pursuant to C.R.S. 13-17-102(5), attached as Appendix 2.

- Colorado Court of Appeals Case 2021CA609 was dismissed because Plaintiff failed to respond to a show cause order. *See* Order of the Court dated June 18, 2021, attached as Appendix 3.
- Mr. Francis consistently fails to comply with procedural requirements. His filings are consistently late, likely because he has filed too many cases and cannot keep up with the procedural requirements of the same. *See, for example*, Request for Extension of Time in 2021CV139, dated May 24, 2021, wherein Mr. Francis claims that he is experiencing an “unusually demanding business schedule” attached as Appendix 4. Mr. Francis has failed to post required cost bonds in his pending appeals. *See* Defendants’ Motion for Order Requiring Bonds for Costs on Appeal Pursuant to C.A.R. 7, attached as Appendix 5.
- Mr. Francis’ legal license was suspended, which precluded him from filing cases on behalf of the multiple trusts he is affiliated with. *See* Mr. Francis’ legal license status attached as Appendix 6.
- Mr. Francis’ pattern caused Pitkin County to bar him from filing any new affirmative cases. *See* Appendix 41 to Petitioner’s C.A.R. 21 Petition to Show Cause.

- Mr. Francis therefore turned to Denver County, a Court that likely does not have jurisdiction, because he could not file in Pitkin County. Mr. Francis filed no less than three cases there and all of those cases have now been dismissed. *See* Orders attached as Appendix 7. These filings are particularly egregious because it displays that Mr. Francis knew his behavior lost him his law license and prevented him access to Pitkin County Courts, yet he continued to file because he believes he can do so without repercussion.

The harm caused by Mr. Francis' is very real. AMCA incurs needless legal fees every time a case is filed. AMCA is required to disclose the existence of these cases to association members and unit purchasers which has an impact on building maintenance, unit sales and unit prices. The affidavit of AMCA president Steve Daubenmier is attached as Appendix 8 and that affidavit details the damage AMCA has and continues to experience because of Mr. Francis' filings.

AMCA also reasonably assumes that Mr. Francis' filings take up judicial resources. Because Mr. Francis' legal license has been suspended, he is required to file everything by mail or hand, which, considering the amount of cases he has filed and the number of submissions for each case (he often seeks multiple extensions of time) certainly creates logistical problems. Another prime example

of wasteful judicial resources can be found in his request for hearing concerning an attorney fees award. Such a hearing is meant to discuss the reasonableness of the hourly rate and time spent. However, Mr. Francis' request is yet another attempt to relitigate the issue ultimately decided in the case filed in 2010. *See* Francis' Request for Hearing on Attorney Fees, attached as Appendix 9, wherein the issues presented include whether or not the 2010 judgment was "void." Unfortunately, the trial court had no choice but to grant the request and it ordered a setting. *See* Court Order granting Francis' Request for Hearing on Attorney Fees, attached as Appendix 10. As of this filing the hearing has not yet taken place because Mr. Francis has not contributed to the scheduling process, but based on past experiences, it is certain to take a considerable amount of time.

On the other hand, AMCA acknowledges that Mr. Francis has a right to access the Court, and the requested relief does not take that right away. To the contrary, the requested relief only asks that this Court bar Mr. Francis from filing or participating in *pro se* cases. Mr. Francis has every right to retain counsel to put forth cases on his behalf and Mr. Francis has the means to do so. Mr. Francis was a practicing attorney for many years. Entities that Mr. Francis has an interest in just sold a residence in Aspen for \$5,850,000. *See* Warranty Deed, attached as Appendix 11.

Mr. Francis' *pro se* filings imperial the principals of justice and his right to be heard is only being limited, not eliminated. This balance in this situation weighs in favor of limiting Mr. Francis' *pro se* filings pursuant to *Winslow* and its progeny.

Mr. Francis' answer brief highlights the abusive nature of his tactics. The show cause order asks why Mr. Francis should not be enjoined from filing *pro se* cases. Instead of analyzing the *Winslow* factors, Mr. Francis just regurgitates the same theories that were decided in the 2010 Pitkin County case, which are unequivocally not at issue here.

Mr. Francis also argues that the *pro se* party in *Winslow* filed 162 cases and, therefore, that number sets the bar for when a *pro se* party can be barred from filing any additional cases – *i.e.* as long as Mr. Francis only files 161 cases, then his ability to file *pro se* should not be limited. That is not the holding of *Winslow*. Instead, *Winslow* holds that *pro se* filings should be barred when the harm caused by the filer outweighs the filer's right to make *pro se* filings and, as discussed above, that is absolutely the case here.

Mr. Francis additionally argues that the Constitution “guarantees” him access to the courts of justice. First, *Winslow* dealt with this exact issue and held that a *pro se* party's rights must yield to the principal of the right to speedy justice

for all. *See Winslow*, 862 P.2d at 921. Next, as mentioned above, the request does not bar Mr. Francis from the courts of justice, it only asks that his ability to file *pro se* cases be limited.

### **CONCLUSION**

The extreme and egregious nature of Mr. Francis' filings cause the balance to weigh in favor of barring any further affirmative *pro se* cases. Mr. Francis' actions cause great harm to AMCA and burden the judicial system. The sanctions the trial courts have imposed (attorney fees and judicial district specific bans) have not deterred Mr. Francis. The only way to curb his vexatious behavior is to prevent him from filing *pro se* cases or participating in his current *pro se* cases. This Court has the power to enter such an Order and it is appropriate to do so.

Respectfully submitted,

STUART D. MORSE & ASSOCIATES, LLC

Dated: July 7, 2021

By: /s/Matthew J. Bayma

Stuart D. Morse, #16978

Matthew J. Bayma, #41464

Attorneys for Petitioner The Aspen Mountain  
Condominium Association

**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2021, a true and correct copy of the foregoing, **THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION'S REPLY IN SUPPORT OF PETITIONERS' MOTION TO SHOW CAUSE PURSUANT TO C.A.R. 21**, was electronically filed through the State of Colorado's ICCES e-filing system upon all counsel of record and to pro se Plaintiff at the following email address and physical address via U.S. First Class Mail, postage prepaid to the :

Robert Francis, pro se  
0201 Heather Lane  
Aspen, CO 81611  
jmbg123@comcast.net

*/s/Kimberley L. Vido*  
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Kimberley L. Vido