

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

vs.

RESPONDENT:

Robert A. Francis

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Case Number:

PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition 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 7,624 words (Microsoft Word 365).

The brief complies with C.A.R. 21(e):

- It contains the following: (A) the identity of the petitioner and of the proposed respondent, together with their party status in the underlying proceeding; (B) the identity of the court or other underlying tribunal, the case name and case number or other identification of the underlying proceeding, and identification of any other related proceeding; (C) the identity of the persons or entities against whom relief is sought; (D) the ruling, action, or failure to act complained of and the relief being sought; (E) the reasons why no other adequate remedy is available; (F) the issues presented; (G) the facts necessary to understand the issues presented; (H) argument and points of authority explaining why the court should issue a rule to show cause and grant the relief requested; (I) contact information for the parties below; and (J) a list of supporting documents, or an explanation of why supporting documents are not available.

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

Original signature on file pursuant to C.A.R. 30(f)

/s/ Benjamin M. Wegener
Benjamin M. Wegener, No. 36952

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INTRODUCTION

Respondent Robert A. Francis is an attorney licensed to practice in the State of Colorado, registration number 6104. As of November 5, 2020, Respondent's Colorado law license was suspended, which was presumably done pending the outcome of an Office of Attorney Regulation Counsel investigation into matters collateral to the underlying Denver District Court matter, among other things. Since 2010, Respondent has filed multiple lawsuits as an attorney of record or in a pro se capacity collaterally attacking orders and judgments entered in Pitkin County District Court Case No. 10CV201. Multiple judges in the Pitkin County District Court have determined that Respondent has initiated and prosecuted lawsuits in a vexatious manner calculated to punish his adversaries, and which have been without basis in law and fact. As a result, Petitioners now request the Court to issue a rule to show cause why Respondent should not be barred and enjoined from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado.

IDENTITY OF PETITIONERS AND PROPOSED RESPONDENTS AND, THEIR PARTY STATUS IN THE UNDERLYING PROCEEDING

Petitioners are Benjamin Wegener, Younge & Hockensmith, P.C., and Wegener, Scarborough, Younge & Hockensmith, LLP, defendants in the underlying action. Younge & Hockensmith, P.C. and Wegener, Scarborough,

Younge & Hockensmith, LLP are predecessor firms to the present-day law firm of Wegener Scarborough & Lane, P.C.

The Proposed Respondent is Robert Francis, plaintiff in the underlying proceeding.

IDENTITY OF UNDERLYING COURT, CASE NAME AND CASE NUMBER, AND IDENTIFICATION OF ANY OTHER RELATED PROCEEDING

The underlying court is the District Court for Denver County, Colorado, with District Court Judge Shelley Gilman presiding, Case No. 2021CV91. Related proceedings include Pitkin County Court Case Numbers 13C35, 13C30039, 15C22, 15C28, 15C30, and 16C15, Pitkin County District Court Case Numbers 10CV201, 13CV30135, 16CV41, 17CV30014, 17CV30066, 17CV30093, 18CV30016, 19CV30032, 19CV30036, 19CV30054, 19CV30075, 19CV30123, 19CV30126, and 20CV30005, Pitkin County Small Claims Court Case Numbers 14S18 and 14S19, Eagle County Court Case Number 15C12, Denver County District Court Case Numbers 21CV134, 21CV135, 21CV139, and 21CV153, and Court of Appeals Case Numbers 2015CA1776, 2018CA772, and 2020CA845.

These cases are discussed in further detail below.

IDENTITY OF PERSONS OR ENTITIES AGAINST WHOM RELIEF IS SOUGHT

Respondent, Robert A. Francis.

**THE RULING, ACTION, OR FAILURE TO ACT COMPLAINED OF AND
THE RELIEF BEING SOUGHT**

Petitioners do not complain of any rulings issued in the Denver County District Court by Hon. Shelley Gilman or in any of the prior related matters. Rather, Petitioners request injunctive relief against Respondent, enjoining him from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado. Respondent has filed multiple actions in Pitkin County Courts collaterally attacking rulings and judgments entered in Pitkin County District Court Case No. 10CV201, all of which have since been dismissed or stayed, other than some of the recently initiated actions in the Denver County District Court discussed below.

These duplicative collateral attacks on the part of Respondent on issues which had already been decided by other courts led to Pitkin County District Court Judge Christopher G. Seldin issuing an order on Mach 6, 2020 barring Respondent from filing any lawsuits or other papers of any kind in the Pitkin County Combined Courts without an accompanying certification by an attorney stating the pleading is well grounded in fact and law. App. 41, ¶31. Pitkin County District Judge Denise K. Lynch entered a similar order in Case No. 10CV201 on April 23, 2020 which ordered the clerks of the Pitkin County Combined Courts to reject any pleadings Respondent might attempt to file. App. 51, ¶13 . After Respondent attempted to

appeal Case No. 10CV201 to the Court of Appeals for the third time and the appeal was ultimately dismissed with prejudice, he commenced a Denver District Court action, pro se, against the Aspen Mountain Condominium Association, the law firm of Younge & Hockensmith, P.C. and its successors, and attorney Benjamin M. Wegener, a shareholder in Wegener Scarborough & Lane, P.C. App. 57.

Respondent has also recently filed similar suits in Denver County against other parties and attorneys involved in 10CV201.

Given that Respondent continues to attempt to relitigate many issues which have already been resolved against him (and related entities controlled by him), and given that Respondent persists in instituting improper litigation in an attempt to abuse the court system and frustrate his adversaries, Petitioners request Respondent be enjoined from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado.

REASONS WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE

Respondent was barred from filing any lawsuits or other legal papers in the Pitkin County Combined Courts without being accompanied by a certification from an attorney that the document is well grounded in law and fact on March 6, 2020 in Case No. 19CV30075. App. 41, ¶31. Despite this, Respondent continued to file documents in Pitkin County District Court Case No. 2010CV201 through

April 23, 2020, at which time Judge Denise Lynch ordered the file closed and directed court clerks to not accept any further filings from Respondent. App. 51, ¶11-13. Respondent thus turned to the Denver County District Court to file the pending lawsuit against the Aspen Mountain Condominium Association, Younge & Hockensmith, P.C., its successors, and attorney Benjamin M. Wegener.

Respondent has also now filed other actions in the Denver County District Court against A. Ronald Erickson and the Aspen Mountain Condominium Association (Case No. 21CV135), The Land Title Guarantee Company (Case No. 21CV 134), and John Lassalette and the Aspen Mountain Condominium Association (Case No. 21CV139), all of which refer or relate to matters involving Pitkin County District Court Case No. 10CV201.

Petitioners, the Aspen Mountain Condominium Association, and other victims of Respondent's untoward litigation practices could conceivably request the Denver District Court to order the same relief as the Pitkin County District Court has, but given Respondent's course of conduct over the years, it remains quite likely he would merely turn to other counties in which to file suits. Notably, respondent has previously attempted this tactic, filing collateral attacks on the Pitkin County judgments and orders in the Eagle County District Court, as discussed in further detail below. Going through this process each time

Respondent files a suit against Petitioners or the Aspen Mountain Condominium Association in a new county would result in a tremendous waste of resources and would only serve Respondent's apparent goal of harassing and disrupting the lives of his adversaries. *See Board of County Com'rs of Morgan County v. Winslow*, 862 P.2d 921, 924 (Colo. 1993). As a result, Petitioners' only adequate remedy is for this Court to issue a ruling with statewide effect, barring Respondent from initiating or pursuing litigation in a pro se capacity.

ISSUE PRESENTED

The issue presented in this Petition is whether Respondent should be enjoined and barred from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado, given his past conduct.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

Respondent and/or his various family-controlled entities previously owned Unit 1A in the Aspen Mountain Condominiums. App. 1, ¶2. In 2009, a drainage backup purportedly caused water damage to Unit 1A. App. 1, ¶8. Respondent filed an insurance claim for the damage with American Family Insurance, the insurance carrier for the homeowner's association, alleging the damage stemmed from a common element. App. 1, ¶10.

The Francis Parties filed suit in the Pitkin County District Court in 2010, Case No. 10CV201, claiming damages resulting from the water damage, and also raised claims that changes made in the Aspen Mountain Condominium governing documents in 2010 and corresponding increases in common assessment expenses were void. App. 1, ¶8, 32. The Aspen Mountain Condominium Association (“AMCA”) later filed a separate complaint involving claims for the Francis Parties' failure to pay common expense assessments owed to the Association for Unit 1-A, which was later consolidated into Case No. 2010CV201. George Allen, Esq. represented the Francis parties during a large part of that litigation, although Respondent would (in violation of an order of the Court) file pleadings in that action at various times affixing his own electronic signature. App. 2.

While Case No. 2010CV201 was being litigated, Respondent filed Pitkin County Court Case No. 13C35 on February 20, 2013, naming the plaintiffs as The J. Lee Browning Belize Trust,¹ a Belize Trust ex rel, AMCA, and Leslee K. Francis. App. 3. While Respondent named AMCA as a Plaintiff in this lawsuit, he had no authority from nor consent of AMCA or its counsel to do so. Respondent ultimately voluntarily dismissed Case No. 13C35. App. 4.

¹ The J. Lee Browning Belize Trust is another of Respondent's family-owned and controlled trust entities.

On August 12, 2013, Respondent filed Pitkin County Court Case No. 13C30039 as counsel for the plaintiffs, while case numbers 10CV201 and 13C35 remained pending. App. 5. The named plaintiffs in case number 13C30039 were identical to the Plaintiffs in case number 13C35: the J. Lee Browning Belize Trust, a Belize Trust ex rel; AMCA; and Leslee K. Francis. Respondent again had neither authority from nor consent of AMCA or its counsel to include it as a plaintiff. The named defendants in this case were Steve Daubenmier, Bruce Lynton, and Donald Miller, as individuals, although all were members of the AMCA Board of Directors. This case alleged that there was no valid Board of Directors of AMCA and therefore any actions taken by AMCA at certain times were invalid, and also asserted the identical claims for relief as case number 13C35. App. 5, ¶6. That case was consolidated into Case No. 2010CV on December 30, 2013. App. 6.

Respondent then filed case number 13CV30135 in Pitkin County District Court on December 12, 2013 as attorney of record on behalf of named Plaintiffs “The Aspen Mountain Condominium Association ex rel, the J. Lee Browning Belize Trust and Leslee K. Francis, The Judi B. Francis Trust, and Belfor, a Colorado Corporation.” App. 7. Respondent again named AMCA as a Plaintiff without its authorization or consent to do so. Belfor was a contractor which

completed work in Unit 1A following the drain back up incident in 2009. App. 7, ¶5-7, 30-34. Respondent asserted that AMCA could add Belfor to case number 13CV30135 as an Involuntary Plaintiff pursuant to C.R.C.P. 19 due to Belfor's refusal to join in the litigation. App. 7, ¶5-7. The named Defendants in that case were American Family Insurance, Donald Miller, Bruce Lynton, Steve Daubenmier as Members of the Board of AMCA, Aspen Resort Accommodations ("ARA"),² A. Ronald Erickson; and Scott Harper. Scott Harper is an attorney who initially defended AMCA in case number 10CV201, and who initiated the later-consolidated foreclosure action on behalf of AMCA in Case No. 11CV46. App. 7, ¶12. Respondent asserted Mr. Harper, as counsel for AMCA and its Board members, among other things, assisted in the preparation and recording of a lien and a lis pendens against Unit 1A based on the alleged assessment delinquency and the foreclosure action initiated in case number 11CV46. App. 7, ¶39.

The other claims in case number 13CV30135 alleged ARA and Mr. Erickson were not validly employed as the property management group for AMCA and their actions in relation to the lien and lis pendens were thus invalid; that ARA and Mr. Erickson violated their respective real estate broker licenses; that ARA

² ARA served as a property management company for AMCA at the times relevant hereto. Ronald Erickson was the principal of ARA.

and Mr. Erickson engaged in the unauthorized practice of law; that the members of the Board refused to indemnify the plaintiffs and facilitate payment to the plaintiffs or to Belfor; and that American Family Insurance refused to pay claims owed to the plaintiffs or to Belfor. App. 7, ¶¶44-66. However, attorney George Allen, who had not previously entered his appearance in case number 13CV30135, filed a Notice of Dismissal pursuant to C.R.C.P. 41(a)(1)(A) on behalf of the plaintiffs on January 31, 2014. App. 8.

Respondent next filed Pitkin County Small Claims Court Case No. 14S18 on May 13, 2014, naming “Judi B. Francis as Trustee of the J. Lee Browning Belize Trust” as the plaintiff, and AMCA as the named defendant. App. 9. That action alleged all of the budgets adopted by AMCA for the Aspen Mountain Condominiums between 2011 and 2014 were invalid, or void, and therefore, plaintiff was entitled to a refund of all of the assessment payments made to AMCA during that time. App. 9, App. 7, ¶¶5-7. Respondent also alleged the common expense assessments AMCA charged between 2011 and 2014 had been improperly calculated as to apportionment of utilities and liability insurance premiums between the owners of the condominium units, and improperly applied to expenses or debts that the Plaintiff did not believe were owed. App. 9, App. 7, ¶¶3-5. These issues had all been previously raised in Case No. 2010CV201. As such, the matter

was also later consolidated into Case No. 2010CV201 in January 2015.³

On May 19, 2014, Respondent, acting as “Attorney in Fact and Protector” of the Judi B. Francis Trust, filed Pitkin County Small Claims Court case number 14S19. App. 10. That matter again named the individual AMCA Directors as defendants. That matter was ultimately dismissed on August 1, 2014. App. 11.

Respondent then filed Case No. 15C12 on May 28, 2015 in Eagle County Court on behalf of “Plaintiffs Renrin, Ltd.; JMBG, Ltd. and the Robert A. Francis Individual Retirement Account” against AMCA and John Lassalette. App. 12. Mr. Lassalette is an attorney who represented AMCA as counsel or co-counsel in Case No. 2010CV201 and many related proceedings. App. 12, ¶2-3. This action asserted none of the assets of the named plaintiffs could be reached by any judgment creditors related to case number 10CV201. App. 12, ¶10. Respondent also asserted he was not a party to case number 10CV201 “in any fashion or capacity,” and that he did not “have any connection with the case whatsoever.” App. 12, ¶5. Respondent further claimed the “Judgment and the Second judgment” entered against him personally as sanctions in case number 10CV201 were invalid because the court had no personal jurisdiction over Respondent, and in essence asked the Eagle County Court to review and invalidate the judgments

³ The order consolidating the matter is not available on CCEF.

entered by the Pitkin County District Court. App. 12, ¶13-15. The Eagle County Court ultimately certified venue to Pitkin County as Case No. number 15C21 on September 11, 2015. App. 13. The Pitkin County Court ultimately dismissed case number 15C21 upon motion because the corporate entity-parties could not proceed pro se. App. 14.

Respondent filed Pitkin County Court Case No. 15C22 on September 22, 2015, naming the plaintiffs as Renrin Ltd. and JMBG Ltd. App. 15. Defendants in that case included A. Ronald Erickson, attorney Michael G. Milstein, and Foster, Graham, Milstein and Calisher, LLP. Mr. Milstein is an attorney in the firm of Foster, Graham, Milstein and Calisher, and he defended Mr. Erickson in case number 10CV201 and the prior related matters. App. 15, ¶2-5. As was the case in case number 15C21, Respondent asserted he was not a party to case number 10CV201, and therefore the judgments entered against Respondent personally and against the Children's Trust were a nullity. App. 15, ¶7, 16-18. Respondent further asserted as he had in case number 15C21 that the plaintiffs were harmed through the defendants' efforts at collecting judgments which had been entered. App. 15, ¶21-23. This matter was dismissed on January 12, 2016 for the same reasons as in case number 15C22; that a corporate-entity party may not proceed in litigation pro se. App. 16.

Respondent filed Pitkin County Court Case No. 15C28 on November 23, 2015, while case numbers 15C21 and 15C22 remained pending, with Respondent as the named Plaintiff. App. 17. Defendants were identified as AMCA, the individual members of its board of directors; Younge & Hockensmith, P.C., Margaret E. Foley (who was an associate attorney at Younge & Hockensmith), and attorney John Lassalette. App. 17, ¶4. This matter also asserted the Pitkin County District Court in case number 10CV201 had no jurisdiction over Respondent or his wife, and therefore all of the judgments entered against Respondent, his wife, and the Children's Trust were void in 2010CV201. App. 17, ¶23-37. The matter was dismissed with prejudice upon motion of the defendants on November 29, 2016. App. 18.

On December 15, 2015, while case numbers 15C21 and 15C22 remained pending, Respondent filed Case No. 15C30 in the Pitkin County Court as the only named Plaintiff. App. 19. The defendants in this action, like in Case No. 15C22, were A. Ronald Erickson, attorney Michael G. Milstein, and Foster, Graham, Milstein and Calisher, LLP. As was the case in case numbers 15C21 and 15C22, Respondent asserted in this matter that he and the Children's Trust were not parties to case number 10CV201, and therefore the judgments entered against Respondent, personally, and against the Children's Trust were a nullity. App. 19, ¶16-19. The

Court granted defendants' motion to dismiss on March 7, 2016. App. 20.

Respondent filed Pitkin County Court Case number 16C15 on June 14, 2016, as attorney for plaintiffs The Lucille J. Glasgow Living Trust, d/b/a "The Francis Children's Trust," Judi B. Francis Irrevocable Trust, Robert A. Francis Irrevocable Trust, and Judi B. Francis. App. 21. The Lucille J. Glasgow Living Trust, d/b/a "The Francis Children's Trust" is another of Respondent's family-owned and controlled trust entities. App. 21, ¶ 2. The named defendants in this case were Mr. Erickson, attorney Michael Milstein, Foster, Graham, Milstein and Calisher, AMCA, Mr. Lassalette, John M. Lassalette, PC, Younge & Hockensmith, P.C., the individual members of AMCA's Board of Directors, and attorney Margaret Foley. Respondent again asserted none of the plaintiffs were parties to or involved in case number 10CV201, and the defendants again all moved to dismiss the matter as the claims were virtually identical to those already decided in case numbers 15C28 and 17CV30014. App. 21, ¶19-22. The Court dismissed the matter with prejudice on January 23, 2019. App. 22.

Respondent filed an Appearance and Notice of Appeal and a Designation of Record on December 23, 2016 in Pitkin County District Court Case No. 16CV41. App. 23. This was apparently an appeal of case number 15C21 which had been previously dismissed in November 2016. This matter sought district court review

of the judgments of attorney's fees awarded to the defendants in case number 15C21. App. 23. Attorney John Lassalette was the only defendant named in the appeal. The District Court ultimately affirmed the County Court finding that the plaintiffs' claims lacked substantial justification and affirmed the judgment of attorney's fees. App. 23.5

Respondent filed Pitkin County District Court Case No. 17CV30014 on February 6, 2017, identifying himself as a "party without attorney" and also as attorney of record for the other named plaintiffs, Judi B. Francis, and AMCA. App. 24. Once again, Respondent named AMCA as a plaintiff in a lawsuit without AMCA's authorization or consent to do so. The defendants in that action again included AMCA, the individual members of its Board of Directors, Younge & Hockensmith, P.C., attorney John Lassalette, Mr. Erickson; and attorney Margaret E. Foley. Respondent yet again alleged the judgments for awards of attorney's fees entered against Respondent and Judi B. Francis in case number 10CV201 were void because neither plaintiff was ever a party to case 10CV201, and therefore the satisfaction of any such judgments from the funds held for AMCA in the Court Registry was improper. App. 24, ¶¶13-14, 34-38. This matter was later dismissed with prejudice on September 13, 2017. App. 25.

Respondent filed Pitkin County District Court Case No. 17CV30066 as

attorney for plaintiff the J. Lee Browning Belize Trust on July 6, 2017, naming AMCA as the defendant. App. 26. This matter involved claims regarding the assessments owed by the Francis Parties in Case No. 2010CV in light of the Court of Appeals Opinion in 2015CA1776. The Court of Appeals had remanded the matter to the District Court in 2010CV201 for further determinations, where the matter remained pending. The Court ordered on October 12, 2017 the matter be set for a hearing to determine whether the issues raised were presently before the court in case number 10CV201. App. 27. Respondent failed to set the matter for a hearing, and after the clerk entered a notice of dismissal for failure to prosecute, Respondent did not respond. The court thereafter dismissed the case on February 16, 2018. App. 27.

Respondent filed Pitkin County District Court Case No. 17CV30093 on September 12, 2017 on behalf of Plaintiffs Robert A. Francis, Judi B. Francis and The Francis Children's Trust, one day before he submitted the Notice Pursuant to C.R.C.P. 41(a) of voluntary dismissal of the claims in Case No. 17CV30014. App. 28. The defendants in this action were identified as AMCA, the individual members of the Board of Directors, Younge & Hockensmith, P.C., attorney John Lassalette, attorney Richard Cummins, Mr. Erickson, and attorney Margaret E. Foley. This action sought a declaratory judgment that the judgments entered

against the plaintiffs in case number 10CV201 were a nullity. App. 28, ¶30-31. The District Court dismissed the matter with prejudice on November 28, 2017 upon motions of the defendants. App. 29.

Respondent filed Pitkin County District Court Case No. 18CV30016 on February 20, 2018 as attorney for the plaintiff, the J. Lee Browning Belize Trust, and AMCA was the named defendant. App. 30. This action raised identical claims for relief as in case number 17CV30066, which had just been dismissed on February 16, 2018. The District Court entered an Order on March 13, 2018, stating that the matter involved another collateral attack on the proceedings in 2010CV201, and therefore stayed the case until the judgment in 10CV201 became final. App. 31. The matter was later consolidated into another action, Pitkin County District Court Case No. 19CV30126. App. 32.

Respondent filed Pitkin County District Court Case No. 19CV30032 on April 2, 2019 as attorney for the plaintiffs, The J. Lee Browning Belize Trust, The Lucille J. Glasgow Living Trust, and The Francis Children's Trust. App. 33. The named defendant in this action was Mr. Erickson. Respondent again alleged the judgments entered against him and The Children's Trust in case number 10CV201 were void as a matter of law. App. 33, ¶20-24. The District Court ultimately entered summary judgment in favor of defendant and dismissed the case with

prejudice under the doctrine of claim preclusion. App. 34.

Respondent filed Pitkin County District Court case number 19CV30036 on April 15, 2019, which was identical in all respects with the Complaint in Case No. 19CV30032. App. 35. The matter was dismissed on May 14, 2019. App. 36.

Respondent filed Pitkin County District Court Case No. 19CV30054 on May 13, 2019 as attorney of record for the plaintiff, The J. Lee Browning Belize Trust, against AMCA. App. 37. Respondent alleged the transcript of judgment filed against Unit 1A as a result of judgment entered in case number 10CV201 on March 6, 2019 was a spurious lien, and made other collateral attacks involving attorney fees awarded in Case No. 10CV201. App. 37, ¶14-35. On November 19, 2019, Judge Seldin entered summary judgment in favor of AMCA, and stated in the Order:

This case raises claims that have already been raised—or should and could have been raised—before Judge Lynch. These issues have been resolved by Judge Lynch, and now the Court of Appeals, adversely to Plaintiff. This case is accordingly barred by claim preclusion. Worse still, Plaintiff has tried this tactic of collateral attack before and been rejected by this Court for substantially the same reason. Should this pattern continue, the Court will likely conclude that the Francis parties are engaging in vexatious litigation, and restrict future filings from them.

App. 38.

Respondent filed Pitkin County District Court Case No. 19CV30075 on July

11, 2019 as attorney for the plaintiff, The Judi B. Francis Irrevocable Family Trust against attorney Scott Harper, AMCA, attorney John Lassalette, and ARA. App. 39. Respondent again argued the February 2010 vote to amend AMCA's declarations was invalid, and AMCA's foreclosure action and the resulting transcript of judgment were void. App. 39, ¶ 22-48. These issues had all been addressed many times over in Case No. 10CV201. Respondent filed a Notice of voluntary dismissal of the claims in case number 19CV30075 on December 4, 2019. App. 40. The notice indicated "[a]ttorney fees may not be awarded as a result of this notice," and "[t]he Defendants are advised that when a party dismissing a case by notice that that party can refile the case with impunity. The Defendants are further advised that it is the intention of the Plaintiff to refile this case with the addition of parties and claims." App. 40, pp. 2-3. Upon motion of the defendants, Judge Seldin entered an Order of dismissal in case 19CV30075 on March 6, 2020, stating, as relevant here:

Despite all of these prior rulings, attorney Robert Francis has proceeded to file separate collateral attack lawsuits on behalf of each Francis party originally involved in 2010CV201, thereby increasing the burden on opposing parties and the judiciary by requiring the Court and opposing counsel to parse each separate case to determine how, if at all, it differs from those filed before. The outcome of this stubbornly litigious, vexatious exercise has been a tremendous waste of judicial resources and the accumulation of pointless attorney fees for the Defendants. Mr. Francis has been sanctioned for such conduct by other divisions of the Court. Thus far, however, such sanctions appear to have had no effect.

Instead, his pattern of filing new lawsuits raising different variations of the same collateral attack continues.

This series of events leads the Court to find and conclude that Robert Francis and the Francis parties have long engaged in a vexatious pattern of filing lawsuits for strategic purposes to punish Defendants, extract some sort of settlement from them, or both. Because Robert Francis is himself one of the Francis parties, these filings have presumably been costless to the Francis parties from an attorneys' fees perspective. Meanwhile, Defendants incur thousands of dollars in fees every time Robert Francis files a new frivolous case against them. The Court finds and concludes from this pattern that the Francis parties have been operating in bad faith for quite some time.

This is unacceptable and besmirches the legal profession. Previous efforts by other divisions of this Court to stop this conduct have attempted to do so by imposing sanctions. The Court does the same here, and concludes that in light of the circumstances, Robert Francis and the Francis parties are ineligible for the safe harbor that permits parties and attorneys to avoid sanctions by voluntarily dismissing a case.

Given that such past awards of sanctions appear not to have provided an effective deterrent, however, the Court further concludes that additional measures are necessary.

The Court therefore bars Plaintiff from filing any lawsuits, pleadings, motions, briefs, suggestions, advisements or other papers of any kind in the Pitkin County Combined Courts without an accompanying certification by an attorney that the pleading is well-grounded in fact and law. Any filing which fails to contain such a certification shall be automatically stricken without the need for any action by an opposing party.

Since the many prior admonishments and sanctions issued against Robert Francis by other divisions of this Court have had no effect, the Court feels confident that his abuse of the legal system will continue unless and until the Colorado Supreme Court takes action. The Court accordingly directs the Clerk to transmit this Order to Attorney

Regulation Counsel.

App. 41, ¶26-28, 30-31, 36.

Respondent filed Pitkin County District Court Case No. 19CV30123 on October 31, 2019 as attorney for plaintiffs The J. Lee Browning Belize Trust, The Lucille J. Glasgow Living Trust, and The Francis Children's Trust against defendants attorney Michael G. Milstein and Land Title Guarantee Company.

App. 42. Respondent again alleged the judgments arising from Case No.10CV201 were void for lack of personal jurisdiction, and the transcript of judgment was a spurious lien. App. 42, ¶26-36. Judge Norrdin of the Pitkin County District Court took judicial notice of Judge Seldin's orders and likewise barred Respondent "individually and any entity for which he is an attorney, trustee, or representative, from filing any lawsuits, pleadings, motions, briefs, suggestions, advisements or other papers of any kind in the Pitkin County Combined Courts without an accompanying certification by an attorney that the pleading is well-grounded in fact and law." App. 43, pp. 43-44.

Respondent filed Pitkin County District Court Case No. 19CV30126 on November 7, 2019 as attorney for the plaintiff, The Judi B. Francis Irrevocable Family Trust, against defendants attorney Scott Harper, AMCA attorney John Lassalette, AMCA, and Steve Daubenmier, as a Director of AMCA. App. 44.

Respondent yet again alleged the February 2010 vote by AMCA to amend the Declaration and the apportionment of common assessments was invalid as it lacked the required percentage of votes. App. 44, ¶¶28-41. This issue had been previously litigated in Case No. 2010CV201 and in the Colorado Court of Appeals in Case No. 15CA1776. Respondent also alleged the amounts for assessments charged to Unit 1A were incorrect (which had also been previously addressed), and other issues previously addressed in Case No. 10CV201. App. 44, ¶¶42-143. On February 26, 2020, the District Court entered an Order reinstating case number 18CV30016 and consolidated it into case number 19CV30126. App. 45. After defendants had filed motions to dismiss the case, the court entered a stay of proceedings on March 6, 2020. App. 46. On March 10, 2021, the District Court entered an Order dismissing the matter, stating “[t]he Court agrees with Defendants that all the claims asserted in this case were frivolous and vexatious, and accordingly awards sanctions against Plaintiffs and Robert Francis” App. 47.

Respondent filed Pitkin County District Court Case No. 20CV30005 on January 9, 2020 on behalf of plaintiffs Renrin, Ltd., Judi B. Francis, Leslee K. Francis, and Robert A. Francis against attorney John Lassalette, PC, the individual members of the AMCA Board of Directors, and Cummins and Krulewich, PC.

App. 48. This action, among other things, also attempted to attack the validity of judgments entered in Case No. 2010CV201. App. 48, ¶3-17. On February 3, 2021, the District Court entered an order stating, “[i]t appears that this case represents yet another attempt by the Francis parties to collaterally attack valid prior judgments of this Court that have been affirmed on appeal or allowed to become final without appeal.” App. 49. The District Court thus ordered Respondent to show cause why case number 20CV30005 should not be dismissed by March 3, 2021. App. 49. The matter was ultimately dismissed on March 9, 2021, with the District Court noting “this case represents the latest in a pattern of filings by Robert Francis and Francis family members and entities designed to punish adversaries through the imposition of litigation transaction costs. Such filings have no place in our system of justice.” App. 50., p. 1.

In Pitkin County District Court Case No. 10CV201, Judge Lynch issued an order on April 23, 2020 staying the matter until the Attorney Regulatory Counsel concludes its investigation of Robert Francis. Judge Lynch noted:

In its February 28, 2020 Order, the Court held as follows “this case has been litigated since 2010. These issues have all been litigated in the trial court and at the Court of Appeals. It is time for the case to be over and final. The Court is closing the Case.” Despite this ruling, the Francis Parties continue to file Motions that are frivolous and groundless.

App. 51, ¶ 11. Judge Lynch also attached and incorporated into her order the

March 6, 2020 order referenced above issued by Judge Seldin in Pitkin County District Court Case No. 2019CV30075. App. 51, ¶12-13.

On May 4, 2020, Respondent initiated the third appeal of Case No. 10CV201 in the Colorado Court of Appeals, Case No. 20CA845. App. 52. As of November 5, 2020, Respondent's Colorado law license was suspended, which was presumably done pending the outcome of an Office of Attorney Regulation Counsel investigation into, *inter alia*, the matters outlined above. After the Court of Appeals issued orders on August 20, 2020 and December 8, 2020 compelling Respondent to transmit the entire record of the 10CV201 matter, Appellees filed a motion to dismiss for Respondent's failure to transmit the certified record on appeal. App. 53, 54, 55. The Court of Appeals issued an order dated February 8, 2021 stating Appellants could not appear before the Court pro se as a "beneficiary" of the Trust parties. App. 55. The Court of Appeals also granted the motion to dismiss for Respondent's failure to transmit the certified record on appeal and dismissed the appeal with prejudice. App. 55. The Mandate was issued on March 20, 2021. App. 56.

It appears, at this stage, that based upon Judge Lynch's and other judicial officers' prior orders, Pitkin County courts would no longer accept filings from Respondent. On February 19, 2021, Respondent thus filed a pro se complaint in

the Denver County District Court, Case No. 21CV91 against Younge & Hockensmith, P.C. and its successor firm, Wegener, Scarborough, Younge & Hockensmith, LLC, attorney Benjamin M. Wegener (“the Wegener Defendants”), and AMCA. App. 57. A Motion to Dismiss was filed by the Wegener Defendants on March 18, 2021. App. 58. Respondent alleged in his Complaint that Petitioner Benjamin M. Wegener and co-counsel for AMCA in Court of Appeals Case No. 2018CA772, John Lassalette, Esq., made false statements to the Court of Appeals during oral argument with respect to amounts which were owed to AMCA by the Francis Parties. App. 57, ¶31-39. Specifically, Respondent alleged a statement made by counsel during oral argument that the Francis Parties did not make any assessment payments during 2013 was false. App. 57, ¶34-36. However, this statement accurately reflected the District Court’s finding of fact that “[i]n 2013, Owners made no payments.” App. 59, ¶8. The complaint also alleged counsels’ statements during oral argument that the assessments (exclusive of attorney fees, interest, late fees, etc.) currently owed by the Francis Parties at the time was in the \$70,000 range, which Respondent argued were false. App. 57, ¶ 36. However, this statement also accurately reflected the District Court’s finding of fact that the Francis parties owed “[q]uarterly and special assessments in the amount of \$73,311.52.” App. 59, ¶26(i); App. 60, ¶8(i). In its September 26, 2019 Opinion

(Case No. 2018CA772), the Court of Appeals affirmed the orders of the District Court in all respects and remanded the matter to the District Court for the sole purpose of awarding AMCA its reasonable attorney fees and costs on appeal. App. 61, ¶¶60-61.

As noted above, a motion to dismiss this Denver action was filed on behalf of the Wegener Defendants on March 18, 2021. Appx. 58. AMCA also filed a separate motion to dismiss on April 9, 2021, which remains pending. The Wegener Defendants' motion to dismiss was granted by the District Court on April 13, 2021. App. 63.

Respondent filed two other complaints in the Denver County District Court on March 12, 2021. App. 64, 65. Both of these identify Respondent as the plaintiff, "pro se and as the sole beneficiary of the Judi B. Francis Trust," despite the Court of Appeals' prior multiple determinations Respondent could not represent the Trust in a pro se capacity. The first action, Case No. 21CV134, names The Land Title Guarantee Company as a defendant, and requests declaratory relief regarding Unit 1A and judgments entered in Case No. 10CV201. App. 64, ¶¶18-63. The second case filed by Respondent in the Denver County District Court on March 12, 2021 is Case No. 21CV135 against A. Ronald Erickson and AMCA. App. 65. That action alleges, among other things, that Mr.

Erickson filed a complaint against Respondent with the Colorado Office of Attorney Regulation Counsel containing an affidavit Respondent labels “libelous” with respect to events involving the 2009 water intrusion into Unit 1A at the Aspen Mountain Condominiums which were raised in 10CV201. App. 65, ¶¶8-24, 33-44. The Complaint also alleges breaches of fiduciary duty on the part of AMCA, and some other claims which are difficult to decipher. App. 65, ¶¶46-70.

Respondent filed a complaint on March 16, 2021 in the Denver County District Court, Case No. 21CV139, again as “pro se and as the sole beneficiary of the Judi B. Francis Trust,” identifying attorney John Lassalette and AMCA as defendants. App. 66. The allegations in this complaint are similar to those made in Denver County District Court Case No. 21CV91, and all involve conduct relating to or arising from Pitkin County District Court Case No. 10CV201. App. 66, ¶¶34-42.

Respondent filed a complaint on March 6, 2021 in the Denver County District Court, Case No. 21CV153 identifying Richard Cummins as a defendant. App. 67. Mr. Cummins represented AMCA for a period of time in Case No. 10CV201. App. 67, ¶¶5-6. The allegations in this action are again unclear, but also revolve around Case No. 10CV201. App. 67, ¶4.

Thus, Respondent has at this point filed at least 28 actions in the courts of

the State of Colorado either collaterally attacking orders or judgments entered in Case No. 10CV201 or which relate to matters which were previously litigated in the District Court and the Court of Appeals in Case No. 10CV201. This does not include several other actions which have been initiated against AMCA in the United States District Court for the District of Colorado. It also does not include lawsuits which have been initiated by Respondent's former attorney, George Allen, such as Pitkin County District Court Case No. 16CV30136, in which AMCA, the individual members of its Board of Directors, Younge & Hockensmith, P.C., and John Lassalette were named as defendants. Nor does it include multiple lawsuits filed by Respondent in the Pitkin County Courts against the Meadowood Homeowners Association, which did not involve AMCA or Younge & Hockensmith, P.C.

**ARGUMENT AND POINTS OF AUTHORITY EXPLAINING
WHY THE COURT SHOULD ISSUE A RULE TO SHOW
CAUSE AND GRANT THE RELIEF REQUESTED**

Respondent has in the past and continues to file multiple lawsuits against Petitioners, AMCA, and other parties and attorneys who participated in Pitkin County District Court Case No. 10CV201, with no basis in fact or law, and which serve only to harass and disrupt Petitioners, AMCA, and the other parties and attorneys. As noted above, despite the rulings of the Court of Appeals since the

time his law license was suspended, Respondent continues to attempt to represent his family-controlled trust entities in a pro se capacity. There is no indication this behavior will cease any time in the near future.

This Court has previously stated “[t]he 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.’” *Board of County Com'rs of Morgan County v. Winslow*, 862 P.2d 921, 923 (Colo. 1993). As this Court went on to note, this right:

is imperiled when a party appearing pro se pursues myriad claims without regard to relevant rules of 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.

Id. As a result, under the circumstances presented here, the 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.” *Id.* A litigant's “right of access to the courts must be balanced against and, in a proper case, must yield to the interests of other litigants and of the public in general in protecting judicial resources from the deleterious impact of repetitious, baseless pro se litigation.” *Id.*

Respondent has and continues to file repetitious and baseless suits against Petitioners, AMCA, and others associated with the Pitkin County District Court litigation in case number 10CV201. As the Pitkin County District Court has recognized, Respondent has engaged in a vexatious pattern of conduct designed to punish and harass Petitioners, AMCA, and others associated with Case No. 10CV201, resulting in “tremendous waste of judicial resources and the accumulation of pointless attorney fees” by Petitioners, AMCA, and other related parties. As a result, Petitioners request the Court bar and enjoin Respondent from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado.

**NAMES, ADDRESSES, TELEPHONE NUMBERS, EMAIL ADDRESSES
AND FAX NUMBERS OF ALL PARTIES OR COUNSEL IN THE
UNDERLYING PROCEEDING**

Petitioners Benjamin Wegener, Younge & Hockensmith, P.C., and Wegener, Scarborough, Younge & Hockensmith are represented by Benjamin M. Wegener, Wegener Scarborough & Lane P.C., 743 Horizon Court, Suite 200, Grand Junction, Colorado 81506, Telephone: (970) 242-2645, Fax: 970-241-5719, email: ben@wegscar.com.

Respondent Robert Francis' information is 0201 Heather Lane, Aspen, Colorado 81661, Phone: (970) 948-6061, Fax: (970) 925-1062, email

jmbg@comcast.net.

The Aspen Mountain Condominium Association is represented by Stuart D. Morse and Matthew J. Bayma, Stuart D. Morse & Associates, LLC, 5445 DTC Parkway, Suite 250, Greenwood Village, CO 80111, Telephone: 303-996-6661, Facsimile: 303-996-0908, email smorse@sdmorselaw.com and mbayma@sdmorselaw.com.

LIST OF SUPPORTING DOCUMENTS

The documents and exhibits which are necessary for a complete understanding of issues are as follows:

1. Complaint, Pitkin County District Court Case No. 10CV201.
2. Second Order to Identify Who George Allen and Robert Francis Represent, Case No. 10CV201.
3. Complaint, Pitkin County Court Case No. 13C35.
4. Order dismissing Pitkin County Court Case No. 13C35.
5. Complaint, Pitkin County Court Case No. 13C30039.
6. Order of Consolidation, Case No. 13C30039.
7. Complaint, Pitkin County District Court Case No. 13CV30135.
8. Notice of Dismissal of Case No. 13CV30135.
9. Pitkin County Small Claims Court Notice, Claim, and Summons, Case

No. 14S18.

10. Pitkin County Small Claims Court Notice, Claim and Summons, Case

No. 14S19.

11. Order of Dismissal, Case No. 14S19.
12. Complaint, Eagle County Court Case No. 15C12.
13. Clerk's Certificate and Receipt for Change of Venue, Case No.

15C12.

14. Order for Entry of Judgment, Pitkin County Court Case No. 15C21.
15. Complaint, Pitkin County Court Case No. 15C22.
16. Order of Dismissal, Case No. 15C22.
17. Complaint, Pitkin County Court Case No. 15C28.
18. Order of Dismissal, Case No. 15C28.
19. Complaint, Pitkin County Court Case No. 15C30.
20. Order of Dismissal, Case No. 15C30.
21. Complaint, Pitkin County Court Case No. 16C15.
22. Orders of Dismissal, Case No. 16C15.
23. Notice of Appeal, Pitkin County Court Case No. 15C21.
23. Order and Decision on Appeal, Pitkin County District Court Case No.

16CV41.

24. Complaint, Pitkin County District Court Case No. 17CV30014.
25. Order of Dismissal, Case No. 17CV30014.
26. Complaint, Pitkin County District Court Case No. 17CV30066.
27. Order of Dismissal, Case No. 27CV30066.
28. Complaint, Pitkin County District Court Case No. 17CV30093.
29. Orders of Dismissal, Case No. 17CV30093.
30. Complaint, Pitkin County District Court Case No. 18CV30016.
31. Order Staying Case, Case No. 18CV30016.
32. Order Consolidating Cases, Case No. 18CV30016.
33. Complaint, Pitkin County District Court Case No. 19CV30032.
34. Order of Dismissal, Case No. 19CV30032.
35. Complaint, Pitkin County District Court Case No. 19CV30036.
36. Order of Dismissal, Case No. 19CV30036.
37. Complaint, Pitkin County District Court Case No. 19CV30054.
38. Order Granting Motion for Summary Judgment, Case No.
19CV30054.
39. Complaint, Pitkin County District Court, 19CV30075.
40. Notice of Dismissal, Case No. 19CV30075.
41. Order on Objections to Rule 41(a)(1) Dismissal, Case No.

19CV30075.

42. Complaint, Pitkin County District Court Case No. 19CV30123.
43. Omnibus Order on Pending Motions, Case No. 19CV30123.
44. Complaint, Pitkin County District Court Case No. 19CV30126.
45. Order Consolidating Cases, Case No. 19CV30126.
46. Notice of Stay, Case No. 19CV30126.
47. Order on Motions to Dismiss, Case No. 19CV30126.
48. Complaint, Pitkin County District Court Case No. 20CV30005.
49. Order Lifting Stay and Directing Plaintiffs to Show Case, Case No.

20CV30005.

50. Order of Dismissal, Case No. 20CV30005.
51. Order Staying Case Until Attorney Regulation Counsel Concludes its Investigation of Robert Francis, Pitkin County District Court Case No. 10CV201.
52. Notice of Appeal, Case No. 20CA845.
53. Court of Appeals Order, August 20, 2020, Case No. 20CA845.
54. Court of Appeals Order, December 8, 2020, Case No. 20CA845.
55. Court of Appeals Order, February 8, 2021, Case No. 20CA845.
56. Mandate, Case No. 20CA845.
57. Complaint, District Court, Denver County, Case No. 21CV91.

58. Motion to Dismiss, Case No. 21CV91.
59. Order Regarding Unpaid Assessments, District Court for Pitkin County, Case No. 10CV201.
60. Amended Judgment and Decree of Foreclosure, Case No. 10CV201.
61. Opinion, Court of Appeals, Case No. 18CA772.
62. AMCA Motion to Dismiss, District Court, Denver County, Case No. 21CV91.
63. Order Granting Motion to Dismiss, District Court, Denver County, Case No. 21CV91.
64. Complaint, District Court, Denver County, Case No. 21CV134.
65. Complaint, District Court, Denver County, Case No. 21CV135.
66. Complaint, District Court, Denver County, 21CV139.
67. Complaint, District Court, Denver County, 21CV153.

CONCLUSION

Given the above, Respondent should be issued an order to show cause why he should not be barred and enjoined from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado. Petitioners therefore respectfully request that this Court issue a Rule to Show Cause directing the proposed Respondent to show cause, if any, why the relief

sought herein should not be granted.

Respectfully submitted this 5th day of May, 2021.

WEGENER SCARBOROUGH & LANE, P.C.
*/s/ Benjamin M. Wegener, Original signature on
file in the Law Offices of Wegener Scarborough &
Lane, P.C.*

By _____
Benjamin M. Wegener, #36952
Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21** was served this 5th day of May, 2021, by CCE e-filing procedures to the following:

District Court, Denver County, Colorado
1437 Bannock Street
Denver, Colorado 80202

Via U.S. Mail, First Class, Postage Prepaid:

Robert A. Francis, Respondent
0201 Heather Lane
Aspen, Colorado 81611

*/s/ Ewara Drews, Original Signature on File
in the law offices of Wegener Scarborough
& Lane, P.C.*
