Larimer County, Colorado, District Court Larimer County Law and Justice Center 201 LaPorte Avenue Fort Collins, CO 80521-2764 (970) 498-6100	
Kendra Musgrave *Plaintiff* vs. Loveland Municipal Court Judge, Gerri R. Joneson *Defendant*	□COURT USE ONLY□ District Court Case No.: Division:
Kendra Musgrave, P*ro se* P.O. Box 1101 Greeley, Colorado 80631	
REPLY TO DEFENDANT'S MOTION TO DISMISS AND CROSS MOTION FOR SUMMARY	

Kendra Musgrave, Plaintiff, pro se, respectfully submits to this Court her Reply to Defendant's Motion to Dismiss and moves this Court for Summary Judgment pursuant to CRCP 56 and alleges and avers as follows:

CROSS MOTION FOR SUMMARY JUDGMENT

1. Defendant had actual notice and knowledge that Plaintiff had filed a written notice with the court which stated that she had discharged Mr. Kokus and was representing herself and therefore all orders and court notices were to be served and mailed directly to Plaintiff.

2. Defendant has proved to this Court that her alleged Order dated September 6, 2016 was not served and herself proven it void as a matter of law. There is no certificate of service. It is therefore null and void and without any legal effect even as a matter of law almost as old as the state: "a judgment rendered without service is . . . void." *Great West Min. Co. v. Woodmas of Alston Min. Co.*, 12 Colo. 46, 53, 20 P. 771, 775 (1888). It is doctrine.

3. Defendant claims in her Motion to Dismiss, last paragraph, to have issued alleged Order on September 6, 2016; but does not claim to have served it. Defendant defiantly refuse to execute a clear and explicit duty to this day.

4. Colorado law mandates that a final judgment must be not can be i) issued and 2) properly served. There is no discretion or other option. A judicial officer either does or does not. Defendant did not. There is not material issue of fact.

5. Plaintiff is entitled to Summary judgment should be granted on these grounds as a matter of law.

6. Summary judgment should only be entered "when there is no disputed issue of material fact and the moving party is entitled to judgment as a matter of law." *McIntyre v. Bd. of Cty. Comm'rs*, 86 P.3d 402, 406 (Colo. 2004).

7. Defendant has failed to file an answer. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

8. Defendant's alleged Order dated September 6, 2016 without proof of service upon Plaintiff, appears to be a final determination of #352152, but in fact Defendant's alleged Order is simply paper. The alleged Order is fraudulent. Thus, Defendant attempts to pull a fraud on the Court, rather than execute her clear and explicit duty to render and properly serve Plaintiff with a final determination in #352152. Defendant should be sanctioned.

9. To date Defendant and by extension her counsel continue to play a shell game pawning off onto the Court and Plaintiff, a void Order dismissing #352152: but that Defendant herself recognizes as void and therefore refuses to issue an Order to Vacate all of the . she ordered, issued and executed during the pendency of #352152 and which most disturbingly are still outstanding, as Defendant has also proven to this Court with her Motion to Dismiss.

10. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant improperly issued and ordered multiple out of state subpoenas, as wherein the last known of record, she issued on her own motion and signed as "District Court Judge."

11. Plaintiff filed September 12, 2016 Motion to Vacate all subpoenas she ordered and issued during the during the pendency of #352152. Plaintiff's unopposed Motion to Vacate is still pending before the Loveland Municipal Court also without determination.

12. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

WITH REGARD TO DEFENDANT'S
MOTION TO DISMISS

13. CRCP 106(a)(2) provides that a district court may issue an order granting relief:

> "Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law

specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained." (Emphasis.)

14. Defendant presides as the lower judicial body, Loveland Municipal Court, Larimar County. Plaintiff filed he CRCP 106(a)(2) Complaint in Larimar County District Court, a higher judicial body.

15. Amended Complaint opening statement declares Plaintiff "seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas." Emphasis.

16. Defendant proved with Motion to Dismiss and enclosed alleged Order dated September 6, 2016 ***without service*** and therefore null and void and of no legal effect, that Defendant to date *still* has not executed her clear and explicit duty to issue and properly serve final determination of final determination of Loveland Municipal Proceeding 352152, and vacate all subpoenas she issued ordered and executed during the pendency of 352152. And, there is no other means to compel Defendant to fulfill her clear and explicit a clear duty there was no other means; Defendant

17. Amended Complaint's specific relief is claimed on five different grounds supported by CMCR 242, Rule 5, *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959); *Radinsky v. Kripke*, 143 Colo. 454, 354 P.2d 500 (1960). That Defendant is barred from issuing her final determination of #352152 nunc pro tunc as that would vitiate Plaintiff's right to appeal. *In Re Marriage of Spector* 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See *Joslin Dry Goods Co. v. Villa Italia, Ltd.*, 35 Colo.App. 252, 539 P.2d 137 (1975)."

18. In accordance with CRCP 106, Plaintiff prayed this Court enjoin Defendant answer with issuance and proper service of her final determination of #352152 dated no earlier than the service date of this Complaint and no later than 21 days from service thereof; and grants to Plaintiff all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

19. Instead, Defendant obtained counsel who on May 15, 2018 filed Motion to Dismiss, enclosing a conspicuous #352152 dismissal Order dated September 6, 2016 without proof of service and thus void.

20. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant was on vacation and otherwise not present in court on 9/6/16 and therefore she purportedly signed the Order on a date when she was not officially present in the court or

courthouse performing her judicial functions and therefore her signature on the Order bearing the date of 9/6/16 renders such Order as being null and void without any legal effect

21. Defendant's Motion to Dismiss failed to address or refute Plaintiff's assertion that Defendant has no choice but execute her clear and explicit duty to issue and properly serve Plaintiff with a valid Order dismissing #352152.

22. Without touching on the merits, Defendant's Motion to Dismiss launched into ad hominem fulminations, characterizations, spurious claims attributed to Amended Complaint for the sake of deriving a false conclusion through tortured logic, such as "Plaintiff alleges a due process violation, her claims lie in tort." Perhaps Plaintiff should be hurt by that statement."

23. Defendant thus "alleges" and thus masquerading her "due process violation" as Plaintiff's. After portraying pro se Plaintiff as ignorant, aggressive, abusing the court "*purports to brought*" under CRCP 106(a)(2) to attribute false assessments such as these as Plaintiff's. Motion Dismiss is written entirely in this manner. The last paragraph is

24. By definition, writs like habeas corpus, are not torts. Claims for mandamus are not tort. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are non compensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

25. Motion to Dismiss never concludes or relates why Plaintiff does not have a clear right to be properly served with a valid issuance of Defendant's final determination in #352152. Or what legal basis for pawning off onto the Court and Plaintiff a backdated Order with no certificate of service.

26. Counsel should be sanctioned.

27. Defendant's Motion to Dismiss dated May 15, 2018 must be denied. It is without merit, frivolous and unethical and fails to state a claim upon which relief can be granted.

REPLY ARGUMENT TO MOTION TO DISMISS

28. Opening sentence of Introduction to Motion to Dismiss begins with the Amended Complaint "filed by Plaintiff, who is *pro se*, *purports* to be brought pursuant to CRCP 106(a)(2)." (emphasis). Just the first few words is an effective ad hominem. Counsel's phrasing while deluding a jurisdictional issue, in the process comes off as explaining even mansplaining in little womaning Plaintiff who is of the same sex. While simultaneously mocking her for exercising her rights. The equally obnoxious connotation is that any of the proletariat should assert rights. Counsel never not disputes or argues Amended Complaint, then concluded it was without merit; but rather labled, degraded it and made it worthless for the person filing it with this tactical ad hominem opening. Counsel builds her argument on these few starter words.

29. Counsel's argument is therefore entirely ad hominem well and subtly executed. By design, and not simply in artful phrasing since counsel keeps adding to it, laying a foundation of

with it to make spurious claims subtle, purposely vague generalizations with false conclusions in a continuous uninterrupted flow. The argues it as fact. It is very difficult to address for the added layers, but without ever actually address or disputing any specifics of Amended Complaint. Completely different from "neighbor kicked a dog, what a jerk," that is fair enough and at least ethical. As opposed to Counsel's initial premise that banks on bias, pro se, even a woman pro se.

30. Truly, unlike counsel, pro ses may not have access to a computer, internet, let alone the luxury of unlimited access to WestLaw, Loislaw, associates, paralegals, word processors, proof readers, secretaries and nothing else to do. Already at a disadvantage, a pro se may be physically impaired, or visually impaired but for what are basic issues of law without being inflated by counsel, choose to address it themselves. Many CRCP 106 proceedings are filed pro se for the clarity of legal issues: someone on a government salary who refuses to do their job.

31. Motion to Dismiss continues with a combination of straw man and generalization fallacy argument: "and challenges the judicial actions..." What challenges? What judicial actions? Challenging, even to use that word, judicial actions or judicial inactions is exactly what the statute was written for. The underlying statement is exercising a right is the same as challenging authority. That is distressing. Dickensian. By the crafted logic of this phrase, Defendant has *proven* Plaintiff deserves to be punished but for what?

32. The bias shown in just that choice of subtle phrasing, and in the context of this case, i.e., that rights are afforded to the public according to the convenience of their betters, identifies why Plaintiff had no other means than to file under CRCP 106(a)(2). Then, and this is pure craft, for the subtle hysteria of the phrasing of Plaintiffs *challenges* to Defendant's *judicial actions*, it that it is not readily apparent that the statement is patently false: Plaintiff *challenges* Defendant's judicial *inaction* in this mandamus: CMCR 232(b) mandates Defendant issue and properly serve Plaintiff with final judgement in #352152, already and CMCR 212(d) mandated immediate dismissal of #352152. No choice and no exceptions.

33. Continuing in what is still the first sentence, "in a municipal court matter." Again, vague. What "municipal court matter?" Is it something we are not supposed to talk about? That has a connotation. Thus the counsel has created a picture of a female pro se who is aggressive "challenges" authority, Defendant's *judicial actions*, as if Plaintiff didn't like her directives, thus this is just *personal* and Plaintiff "*purports* this is brought under CRCP 106(a)(2)." But we know... Or is counsel implying it was simply a matter of bumping cars in the parking lot? Then Defendants would not have executed judicial actions. And, thus careful to be vague.

34. Counsel's sentence thus reads "Plaintiff's Amended Complaint filed April 16, 2018 filed by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter."

35. First paragraph of Plaintiff's Amended Complaint reads, "In seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152." Also, there is no "purports to be brought."

36. It is almost a direct contradiction with the deficit supplemented with a negative personal impression. The clear, false and negative message from that one statement hat Plaintiff's Amended Complaint is meritless. Without raising a single argument.

37. Counsel for the Defense continues employing the Socratic method. That is 'When the debate is lost, slander becomes the tool of the loser." Next sentence reads "The Amended Complaint and exhibits thereto are vague and rambling and do not concisely show that Plaintiff is entitled to relief." *Incoherent* is not wordy enough. The Court might miss that. Arguendo, even accepting that, for this reason Defendant does not have to issue and properly serve Plaintiff with a final determination in #352152? And, if relief was only available to those whose papers were not vague and rambling and do not concisely show [a] Plaintiff is entitled to relief," then what relief is there for any plaintiff? Verizon. Apple. Their attorneys. Insurance litigators.

38. However, the Defense counsel disproves her own statement: if Amended Complaint "did not concisely show that Plaintiff is entitled to relief," why submit a void Order with the same Motion to Dismiss? Why bother? Further still, exactly how are "exhibits...vague and rambling?" But for a few, it was all court forms, adjourn slips, etc. Also, by nature an exhibit supports a specific statements or arguments. Exhibit*s* in the plural is then a collection of specific statements. This sentence is self defeating.

39. xIt is particularly abusive in the context of this proceeding because Defendant's municipal court denied even a printout of the register of actions/docket for#352152. Defendant's court has maintained uninterrupted control over the record, denying all access that Plaintiff could not obtain transcripts.

40. Basic to any CRCP 106 proceeding is an existent record. A mandamus to compel as is in this instant case, is more difficult by nature than prohibition, because it requires proving a negative: that a clearly dutiful act was not executed. Whereby a full record is mandatory. Plaintiff was thus put to an extreme advantage.

41. The first adjourn slip, however, and each thereafter each with two counts of "aiding and abetting non-payment," show a fatal jurisdictional defect, a defective summons and complaint and alone prove Defendant's clear and explicit duty to issue a dismissal immediately, then and there, under CMCR 212(d) to issue and properly serve dismissal upon Plaintiff. While simultaneously proving that she did not.

42. Also, the very word "non-payment" mandates immediate dismissal CMCR Rule 212(d) as that is far beyond Defendant's subject matter jurisdiction and scope of authority because "no Colorado statutory or constitutional provisions authorizing the municipal court to hear civil claims for money," Englewood v. Parkinson, 703 P.2d 626 (COA 1985). Citing Denver County Court v. Lee, 165 Colo. 455, 439 P.2d 737 (1968) the court ""the municipal governing body of each city or town shall create a municipal court to try and hear all alleged violations of ordinance provisions of such city or town"" and "[t]he city's home rule charter limits jurisdiction of the municipal court to actions arising under the city charter and ordinances *Englewood v. Parkinson*, supra.

43. Adjourn slips, notices, inter alia, demonstrate that over a course of time Defendant did not issue and properly serve Plaintiff with a final determination; and, thus also a showing of willful refusal to dismiss; and, thus showing there is no other means than mandamus to force Defendant to execute her clear legal duty, as well as for sanctions.

44. However, speaking of "vague and rambling," Counsel continues "Plaintiff's Amended Complaint *attempts* to assert five claims for relief" (emphasis); because, again, "Plaintiff, who is pro se" can't comprehend these things too wonderful for her and has inflicted the court with this *attempt*. It is a backhanded way to proclaim Plaintiff does not know thus bolstering the previous assertion that Amended Complaint is incoherent. Counsel then projects *her own* claims "1) First claim for relief the right to represent oneself." Patently false statement and/or just deliberately obtuse (this is not tort): Proclaimed below the caption of Amended Complaint is the relief sought for mandamus "issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas. For that relief, Plaintiff asserted that because she was entitled to proceed pro se Defendant had to acknowledge her and serve her. Incorporated under First Claim is the record proving Defendant's court long had notice of address and when counsel was discharged as set forth in paragraphs 1-34 under the subheading "as is record and fact," under heading under "general allegations," and incorporated in First Claim.

45. Lest there be any issue, as is doctrine that Colorado courts do not exalt form over substance. One can figure it out. However, that would defeat the purpose of ridiculing and with ridiculous claims easily obtain dismissal, while preventing the Defendant from every issuing and serving her own dismissal as is Plaintiff's right. Each of these three opening sentences are unethical as well as degrading in and of itself. That meaning however "is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used," *Yates v. United States*, 135 S. Ct. 1074 citing Robinson v. Shell Oil Co., 519 U. S. 337, 341. J. Alito concurring.

46. Taken together: "Plaintiff's Amended Complaint, filed April 16, 2018 by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter. The Amended Complaint and exhibits thereto are vague and rambling and do not clearly show that Plaintiff is entitled to relief. Plaintiff's Amended Complaint attempts to assert five claims for relief 1) First Claim for Relief, the right to represent oneself; 2) Second Claim for Relief for issuance of a judgment; 3) Third Claim for Relief for service of all 4) Fourth Claim for Relief challenging the propriety of a potential nunc pro tunc order; and.."

47. That from here, and by the end of the counsel's argument wherein Defense counsel appears to be jonesing for a Trinity hearing; Counsel's opening sentence then appears as a dog whistle calling the Court's attention to convert Amended Complaint filed by "Plaintiff, who is pro se," into *anything else but* i.e., *create* a jurisdictional defect. And so engaging in taking advantage of the pro se status of Plaintiff traversing the parameters of this CRCP 106(a)(2), sponsoring counsel in protracting litigation and get the City of Loveland to pay for it. With Defendant still not issuing and properly serving Plaintiff a final determination of #352152. Just like before...

48. Whether or not this was counsel's intent, and even if Plaintiff is badly mistaken, that Plaintiff, who is pro se, but upon initial reading and without even reading the last page, could

so construe Motion to Dismiss, creates the appearance of impropriety. And, even if Plaintiff reads to much into it, that too is the problem or even the intent of sweeping opinion/argument, one can read a phonebook into it. The Motion to Dismiss is spurious, *frivolous* and unethical, but that that would seem to be for a purpose, it then creates the appearance of impropriety.

49. Fair or not, counsel is credentialed, accomplished in complex litigation and not someone new to the field. In artful phrasing or common error seem improbable. *Noblesse oblige*. Counsel should be sanctioned.

50. Continuing, "5) Fifth Claim for Relief for an alleged violation of Plaintiff's asserted right to due process." It is a patently false statement and blatant engineering. It was not an allegation but statement of fact that Plaintiff was/is denied access to the record, the file, and even a printout of the docket, showing the Court there is no other means fundamental to a CRCP 106(a)(2) claim for mandamus.

51. Speaking of "vague and rambling:" Motion to Dismiss then declares "The essence of Plaintiff's Amended Complaint." Again. How does one assert or refute "essence?" Further supports for her previous two declarations that Amended Complaint was incoherent - this is three layers deep now- because Plaintiff is pro se. With this launch, of her beliefs counsel thus *wisely* interprets - entirely *different* Amended Complaint, seeking different relief.

52. From the record, "findings essential to the determination of the judgment have preclusive effect, superfluous findings, (or vague beliefs) do not. Zabriske v. Zolato, 22 AD2d 620, 257 N.Y.S.2d 965 (1st Dept. 1965); Silberstein v. Silberstein, 218 NY 525 (1965); 'We will recapitulate, we hope for the last time, in the light of the number of occasions it has been necessary to do so, the basic ground rules. Essentially, the prosecutor is to argue the case...He is not to interject his personal beliefs." States v. Cotter, 425 F.2d 450, 452 (1st Cir. 1970) (emphasis.)

53. The rest of the sentence, true to established pattern – vague false premise/false conclusion - then declares that "Plaintiff's Amended Complaint *appears*" *another* declaration that the Amended Complaint is incoherent, that counsel can complete her own negative and false rendition, "to be a due process challenge to the actions of Judge Joneson" - supporting her previous declaration as fact that Plaintiff *challenges* the *judicial actions* – "and is therefore barred judicial immunity." Just vague enough and patently false even in taking that assertion at face value. *Judicial actions* are challenged every single day. That is the construction of the court system, Court of Appeals, Supreme Court, U.S. Supreme Court.

54. However, there is no judicial immunity from mandamus. Or, from disciplinary actions. *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 is (Colo. 2001). A remedial reading shows CRCP 106(a)(2) does not recognize immunity (see *Englewood v. Parkinson*, supra.) but was specifically written to take judicial officers to task for the sake of due process, which mandates since 1888, that Defendant must issue and properly serve Plaintiff with a valid final determination of #352152 .

55. Motion to Dismiss then concludes "Plaintiff's failure to comply with the Colorado Governmental Immunity Act ("CGIA"), the Order dismissing the municipal case in question and the case law governing writs..." This is an outrage. Defendant through her counsel has tried to

pawn off onto the Court and Plaintiff an alleged Order without certificate of service in attempting to pull a fraud on the Court, so there is no Order; *and there is no such mandamus case law governing writs*, which is why none is cited: it is pure fiction. CGIA is a separate and inapplicable section of the law. One never complies with CGIA notice requirements to file CRCP 106, any more than one complies with Colorado Open Records Act to file for divorce. This is just degrading. Further, is Defendant alleging that she injured Plaintiff? If so, then state the injury before spending pages arguing CGIA notices. And, finally, and to that end, is Defendant a reigning monarch, Queen of Loveland? Is Defendant her own government? If unsure, look at the title. "The title is especially valuable here because it reinforces what the text's nouns and verbs independently suggest...this particular one does not cover every noun in the universe with tangible form," *Yates v. United States, supra.* Such as Colorado Government Immunity Act.

56. Lest it unclear: Mandamus is not tort. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are noncompensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

57. Defendant then cites the following cases:

58. *Trinity Broadcasting, Inc. v. City of Westminster* 848 P.2d (1993) "In this case, we address whether the defendant, the City and County of Denver, waived its immunity for injuries Doreen Heyboer sustained as a passenger on a motorcycle that could not timely brake when a car unexpectedly turned left in front of it. The answer depends on whether a deteriorated roadway is an "unreasonable risk to the health or safety of the public." Immaterial and without relevance.

59. *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001). "Thus, the rule in Colorado is precisely the opposite of the federal system: the state and its subdivisions are subject to the same liability as private entities, unless the General Assembly has affirmatively protected the state from liability through immunity legislation." Denny Constr., 199 P.3d at 750.2 And, "In this case, we clarify the relationship between "maintenance" and "design" under the Colorado Governmental Immunity Act ("CGIA" or "Act"), as it was an accident case. *Also,* immaterial and without relevance.

60. *Villalpando v. Denver Health and Hospital Authority*, 181 P3d, 361(Colo. App.2007) was another personal injury medical malpractice and negligence case that was appealed for notice. And, *Mesa County School District No. 51 v. Kelsey*, 8.P3d 1200, 1206 (Colo. 2000) was a slip and fall. Still, immaterial and without relevance.

61. Then declares "To the extent that Plaintiff alleges a due process violation." Certainly in the sense that Defendant has pulled a fraud on the Court submitting a void Order with no proof of service *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. Thompson v. McCormick, 138 Colo. 434, 335 P.2d 265 (1959); Radinsky v. Kripke, 143 Colo. 454, 354 P.2d 500 (1960). That Defendant is barred from issuing her final determination of #352152 nunc pro

tunc as that would vitiate Plaintiff's right to appeal. In Re Marriage of Spector 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See Joslin Dry Goods Co. v. Villa Italia, Ltd., 35 Colo.App. 252, 539 P.2d 137 (1975)."

62. Line 5 on page 4 of Motion to Dismiss declares "Plaintiff's assertion of jurisdiction by invoking CRCP 106(a)(2) does not save her Amended Complaint." Invoking? Assertion? That is how it was filed. There was no after the fact "assertion" or "invoking" anymore than "purports to be brought" as this scripted Motion to Dismiss pretends for a false record.

63. Motion to Dismiss finally on last page finally addresses the issue "First, she ignores the fact that an order dismissing the action against her was entered nearly two years ago." Of course Plaintiff ignored that purported fact. Plaintiff couldn't help but ignore it. There is no certificate of service with that same alleged Order. When was it ever mailed to and properly served on Plaintiff?

64. "Second... mandamus will not 'lie against a court, unless it be clearly shown that such court has refused to perform some manifest duty.' See *Lindsey v. Carlton*, 44 Colo. 48 (1908)." This was a mandamus proceeding against a county judge. Defendant or rather counsel knew it was doctrine that absolute judicial immunity and CGIA has *never* applied to mandamus, but argued it knowing full well it was frivolous and that Defendant. And, still enclosed a sham Order with this Motion to Dismiss.

65. *Then,* staggeringly, in the very next sentence, knowing full well absolute immunity cannot be injected into a mandamus proceeding, again, *attempts* to inject it citing *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 (Colo. 2001). However upon reading further, after laying down foundation for immunity to determine if statement in the instant case had common law privilege, found at 376:

> "that a grant of absolute immunity does not shield attorneys from the imposition of CRCP 11 sanctions... In reaching that conclusion we explained that CRCP safeguards the judicial process by compelling attorneys to submit pleadings which are truthful and meritorious arguments." Concluding, "We reasoned that if otherwise immune attorneys are placed above the regulation of the legal profession, the integrity of the judicial process, as well as the purpose upon which a grant of immunity is founded, we would be compromised." *Hoffler v. Colorado Department of Correction, supra.*

CONCLUSION

In the face of mandamus Defendant *still* has not executed her clear and explicit duty even to issue and properly serve Plaintiff with a final determination in #352152. In continuing historical pattern, Defendant has chosen instead to act obstructively to pull a fraud on the Court with a sham Order without a certificate of service, rather than submit to statutory and constitutional mandates

and execute her clear legal duty: issue and properly serve final judgement. Before this Court Defendant and her counsel have acted willfully in an ongoing display of low moral turpitude and grievous acts as set forth in herein. It is against public interest to countenance this abuse. Plaintiff respectfully requests this Court sanction each and recommend discipline.

There are no material issues of fact. Summary judgment should be granted Plaintiff as a matter of law. Defendant's Motion to Dismiss is void of merit and frivolous and has added no substance to this proceeding and must be denied for failure to state a claim upon which relief can be granted.

WHEREFORE, for the reasons stated above and all papers heretofore submitted, Plaintiff prays this court:

a) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date dismissal of #352152 at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

b) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date Order to Vacate in#352152 each of the subpoenas she has issued, ordered and executed served upon each party, with copy and proof of service enclosed at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

c) Deny Defendant's Motion to Dismiss in its entirety.

d) Sanctions

e) all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

In the alternative:

Order to Custodian of Records of the City of Loveland, to produce attendance records times and dates only for Defendant from August 15, 2016 through September 15, 2016 *and* Loveland Municipal Court calendar for each day August 15, 2016 through September 15, 2016; Relief described a - e as set forth above; all such and other relief as is just and proper.

Dated: May 22, 2018

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