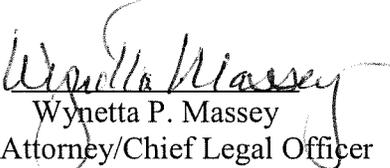


QUARTERLY REPORT  
TO CITY COUNCIL

LITIGATION AND ADMINISTRATIVE MATTERS

November 2014

Covering August through October 2014

  
Wynetta P. Massey  
City Attorney/Chief Legal Officer

## TABLE OF CONTENTS

	PAGE
Litigation Section	
Disposed Cases	3
New Cases	9
Current Cases (listed by department)	11
Administrative Section	
EEOC/CCRD	
Disposed Matters	40
New Matters	40
Current Matters	40
Utilities	
Water Court Cases	43
Workers Compensation	44
Hospital Collection Matters	44
Criminal Prosecutions Section	44

## LITIGATION SECTION

In this section, the symbol “(IC)” indicates representation by insurance counsel; “(OC)” indicates representation by outside counsel on a contract basis; and “(CC)” indicates that a staff attorney is co-counsel with either outside or insurance counsel. All other litigation matters are handled completely by the City Attorney’s Office staff attorneys. *NOTE: Hours worked are cumulative and reflect combined time of attorneys and paralegals.*

### **DISPOSED CASES**

Crouse, Robert C. v. The City of Colorado Springs, a Colorado governmental entity; the City of Colorado Springs Police Department, a local government entity; Peter Carey, in his official capacity as the Chief of the Colorado Springs Police Department; El Paso County, a Colorado governmental entity, Dan May, in his official capacity as the District Attorney for El Paso County, and Nick Bayne in his official and individual capacity and other unknown member of the Colorado Springs Police Department, in their official and individual capacities

El Paso County District Court Case No. 2013CV2055;

Removed to United States District Court Case No. 2013CV1786-WYD-KMT

CLAIM: Plaintiff brings constitutional claims stemming from Defendants’ alleged destruction of seized medical marijuana.

STATUS: June 17, 2013 Summons and Complaint served. July 8, 2013 Defendants file Notice of Removal to US District Court. July 15, 2013 City Defendants file Motion to Dismiss; County Defendants file motion to dismiss. July 31, 2013 Plaintiff files First Amended Complaint omitting federal claims. August 5, 2013 Court denies as moot both City Defendants’ and County Defendants’ motions to dismiss. August 14, 2013 Defendants file joint motion to dismiss Plaintiff’s First Amended Complaint; Plaintiff files motion to remand to State Court. September 4, 2013 Plaintiff files response to Defendants’ joint motion to dismiss. September 25, 2013 Court grants a stipulated motion to vacate scheduling conference and associated deadlines. November 5, 2013 Court issues order remanding case to State Court as no federal claims asserted in amended complaint; Defendants’ motion to dismiss denied as moot. January 28, 2014 Status conference held. February 7, 2014 County Defendants file motion to dismiss Plaintiff’s First Amended Complaint. February 10, 2014 City Defendants file motion to dismiss Plaintiff’s First Amended Complaint. April 7, 2014 Plaintiff files Response to City Defendants’ and County Defendants’ motion to dismiss pursuant to CRCP 12(b)(1) and 12(b)(5). April 11, 2014 County files reply to their motion to dismiss and City defendants file motion for extension. City files reply on April 28, 2014. July 23, 2014 Court grants the City’s motion to dismiss with prejudice. Deadline to appeal September 8, 2014. July 24, 2014 Court grants County’s motion to dismiss. August 13, 2014 Parties file stipulation for disposition of case; each party to bear their own costs. August 14, 2014 Court grants stipulation for disposition. (Total 185.9 hours – Turner)

(OC)

City of Colorado Springs, a Colorado Home Rule City and Municipal Corporation v. Public Employees’ Retirement Association of Colorado, a Body Corporate and Instrumentality of the State of Colorado v. Memorial Health System

Denver County District Court Case No. 2012CV5714

**CLAIM:** Parties dispute the applicability of the Termination Provisions of the Public Employees' Retirement Association Act, C.R.S. §§ 24-51-101 et seq. (the "Act") to the lease of Memorial Hospital. The City of Colorado Springs ("City") claims the Termination Provisions do not apply to the transaction and, accordingly, that it does not owe Public Employees' Retirement Association ("PERA") any amounts under the Act. City seeks declaratory judgment.

**STATUS:** On September 13, 2012 City files Complaint. PERA files answer to complaint and brings counterclaim / third-party complaint against Memorial Hospital. Court grants joint stipulation for entry of escrow agreement. March 6, 2013 Parties file joint motion for entry of stipulated protective order, which was granted on March 9, 2013. April 11, 2013 Plaintiff City files motion to enforce agreement. May 2, 2013 PERA files opposition to City of Colorado Springs' motion to enforce agreement. May 9, 2013 City files reply in further support of motion to enforce agreement. May 10, 2013 PERA files motion for summary judgment. June 4, 2013 Court issues order denying Plaintiff's motion to enforce agreement. June 14, 2013 Plaintiff City and Third Party Defendant Memorial Health System file cross motion for summary judgment on all claims. June 28, 2013 PERA files reply in support of Summary Judgment Motion; PERA also files opposition to City of Colorado Springs and Memorial Health System's Summary Judgment Cross-Motion on all claims. July 12, 2013 Plaintiff City and Third Party Defendant Memorial Health System file reply in support of cross motion for summary judgment on all claims. July 24, 2013 Court denies both the Defendant and the Plaintiff's motion for summary judgment. July 25, 2013 Court denies motion for bifurcation of trial. July 27, 2013 Court issues order granting stipulated amended protective order. Aug 7, 2013 Court grants continuance of trial to 3 weeks beginning March 10, 2014. August 13, 2013 Parties file joint motion to hold for fourteen days further rulings and briefings. August 28, 2013 PERA files reply in support of its motion to quash subpoena on non-party Cavanaugh MacDonald Consulting ("CavMac"). September 17, 2013 the Parties file a joint motion for the appointment of the Ret. Hon. Harlan Bockman to serve as appointed judge for the remainder of the case at the trial court level. September 18, 2013 The Honorable Michael L. Bender appoints the Ret. Hon. Harlan R. Bockman as an appointed judge. October 18, 2013 City files Brief in further support of PERA's obligation to disclose info considered by CavMac. October 18, 2013 City and Memorial file renewed motion for summary judgment on all claims; PERA also files motion for summary judgment as to application of the termination provisions; PERA files Motion for Determination that Memorial Must Exhaust Its Administrative Remedies as to the PERA Board's Calculation of Its Withdrawal Liability. October 28, 2013 City and Memorial file responses in opposition to both PERA's motion for determination that Memorial must exhaust administrative remedies and PERA's summary judgment motion as to the application of the termination provisions; PERA files its opposition to the City and Memorial's renewed motion for summary judgment and its reply in support of its summary judgment motion as to the application of termination provisions. November 11, 2013 Court issues order denying PERA's motion for determination that Memorial must exhaust administrative remedies. December 11, 2013 PERA files notice of issuance of staff determination letter and issues staff determination letter to Third-Party Defendant Memorial Health System and Plaintiff City of Colorado Springs that as of September 30, 2012, Memorial's withdrawal liability from PERA was \$190,024,935, plus accruing interest. February 3, 2014 Parties submit proposed orders on cross-motions for summary judgment. February 11, 2014 Judge denies City and MHS's motion for summary judgment and grants PERA's motion for summary judgment. February 24, 2014 Plaintiff City and Memorial Hospital file motion to certify Court's summary judgment order for interlocutory appeal. March 17, 2014

PERA files its response to City and Memorial's motion to certify Court's summary judgment for interlocutory appeal. March 18, 2014 PERA files petition for rule to show cause under C.A.R. 21. March 24, 2014 City and MHS file reply in support of their motion to certify Court's summary judgment order for interlocutory appeal. April 1, 2014 PERA files Petition as to Exhaustion of Administrative Remedies. April 22, 2014 City files opposition to PERA's motion to certify ruling on exhaustion of administrative remedies. April 28, 2014 Plaintiff City and Third Party Memorial Health System file motion for summary judgment on PERA's equitable claims. April 29, 2014 PERA files reply in support of C.A.R. 4.2 Petition as to Exhaustion of Administrative Remedies. Response and replies both submitted to City and Memorial's motion for summary judgment. May 30, 2014 PERA files motion to quash subpoenas. June 17, 2014 Court files order re Plaintiff's motion for certification of trial court's determination of summary judgment orders pursuant to C.R.S 13-4-102 and C.A.R. 4.2 for an interlocutory appeal wherein the Court denies motion for summary judgment. June 20, 2014 Plaintiff files response in opposition to PERA's motion to quash subpoena; City files motion to rescind Court's June 17, 2014 order and request for ruling on all pending C.A.R. 4.2 motions. June 23, 2014 Plaintiff files response in opposition to PERA's motion to quash subpoena in which PERA replied on June 30, 2014. July 3, 2014 PERA files motion for determination of law re: presumption for actuarial calculation. July 7, 2014 Court denies motions to quash. July 11, 2014 PERA's response to City of Colorado Springs' and Memorial Health System's motion to certify summary judgment order on PERA's equitable and common-law claims for interlocutory appeal and files response to City's and Third Party Defendant Memorial's motion to rescind the Court's June 17, 2014 order and request for ruling on all pending C.A.R. 4.2 motions. **September 23, 2014 Parties file joint motion for entry of settlement agreement; the City agrees to pay PERA the total sum of \$190,000,000 to settle matter. September 24, 2014 Court grants motion for entry of settlement agreement. October 3, 2014 Parties file joint motion for dismissal with prejudice.**

(Total 201.7 hours – Turner / John Cook, Joseph Lambert, Hogan Lovells US LLP)

Jones, Kevin Francis v. Marcus Lehmkuhl, City of Colorado Springs, Colorado, R.A. Yohn, Al Harmond, Bret Poole, and One to Ten Unknown Defendants to be Identified Through Discovery and Trial, Sued Individually and in their Official Capacities

United States District Court Case No. 11-CV02384-WYD-CBS

CLAIM: Plaintiff alleges that the police lacked probable cause to search his house for drugs because of omissions and false statements by Defendant Lehmkuhl in his probable cause affidavits. Plaintiff claims searches conducted pursuant to the warrants violated his First, Fourth, Fifth, Sixth and Fourteenth Amendment rights.

STATUS: September 12, 2011 Complaint filed with the U.S. District Court. January 6, 2012 Plaintiff files (second) amended complaint. January 18, 2012 Court orders dismissal of the following Defendants originally named in the lawsuit: Richard Myers, Lionel Rivera, the Colorado Springs Police Department, El Paso County, Colorado, and the El Paso County Sheriff's Department. January 30, 2012 Summons and Complaint received. March 22, 2012 Defendants file motion to dismiss. May 29, 2012 Plaintiff files response to Defendants' motion to dismiss. June 12, 2012 Defendants file reply to motion to dismiss. July 30, 2012 Plaintiff files motion for leave to file third amended complaint. August 13, 2012 Defendants file response to Plaintiff's motion for leave. Motions hearing took place January 31, 2013 at 1:30 p.m.; Magistrate recommends that the Court deny Plaintiff's motion for leave to file Third Amended

Prisoner Complaint and will issue a written recommendation regarding Defendants Motion to Dismiss. April 26, 2013 Magistrate issues recommendation on Defendant's Motion to Dismiss that certain claims be dismissed with prejudice and certain claims and defendants be dismissed without prejudice. June 18, 2013 Plaintiff files objections to magistrate's recommendations. June 26, 2013 Defendants file motion to strike objections. July 1, 2013 Court grants Defendants' motion and strikes Plaintiff's objections. July 9, 2013 Plaintiff files motion for reconsideration of order striking objections. July 26, 2013 Defendants file response to motion for reconsideration. September 27, 2013 Court affirms and adopts recommendations of U.S. Magistrate Judge. City's motion to dismiss is denied in part and granted in part, dismissing without prejudice with leave to re-file in a Third Amended Complaint claims against Defendants Yohn, Harmon and Poole and certain of claims one, four, seven, eight and ten. The remaining claims are dismissed with prejudice. Plaintiff may re-file only those claims dismissed without prejudice in a Third Amended Complaint by October 25, 2013. October 23, 2013 Plaintiff files third amended complaint. November 13, 2013 City files motion to dismiss Plaintiff's third amended complaint. December 12, 2013 Plaintiff files response to City's motion to dismiss Plaintiff's third amended complaint. December 20, 2013 Court issues order denying Plaintiff's previously-filed objections to magistrate's recommendation and motion to strike. December 23, 2013 City files reply to its motion to dismiss Plaintiff's third amended complaint. July 23, 2014 Magistrate recommends the motion to dismiss be granted and that the Fourth Amendment claims be dismissed without prejudice and that all other claims be dismissed with prejudice. **September 19, 2014 Court issues order affirming and adopting recommendations of U.S. magistrate judge: claim one is dismissed without prejudice, remaining claims dismissed with prejudice.**

(Total 246.8 hours – Turner)

Lee, Michael v. The City of Colorado Springs, a Colorado governmental entity; The City of Colorado Springs Police Department, a local governmental entity; Pete Carey, in his official capacity as the Chief of Colorado Springs Police Department; El Paso County, a Colorado governmental entity; Dan May, in his official capacity as the District Attorney for El Paso County, and other Unknown Members of the Colorado Springs Police Department

El Paso County District Court Case No. 2014CV30482

CLAIM: Plaintiff alleges that after execution of a search warrant officers seized and destroyed marijuana plants, causing him damages. He asserts claims for negligence, interference with business relations and violations of the Colorado Constitution.

STATUS: March 25, 2014 Summons and Amended Complaint served. April 11, 2014 Amended Complaint and Summons served. April 14, 2014 City Defendants and Defendant May file motion to dismiss. May 21, 2014 Parties file stipulation for dismissal with prejudice which is granted by the Court on May 23, 2014.

(Total 67.15 hours – Turner)

Tavis, Betty Sue v. The City of Colorado Springs

El Paso County District Court 2013CV30871

CLAIM: Plaintiff alleges that the City failed to maintain a sidewalk at 601 South Weber Street which caused Plaintiff to trip and fall.

STATUS: August 15, 2013 Summons and Complaint served. September 5, 2013 City files Answer and Affirmative Defenses. November 6, 2013 City files designation of non-parties.

Mediation scheduled for June 13, 2014. May 28, 2014 Parties file notice of settlement. **Settled for \$5,000 on signed agreement September 10, 2014. September 16, 2014 Parties file stipulated motion for dismissal with prejudice which is granted by Court on same day.**

(Total 129.2 hours – White)

Williams, Antonio Dwan v. Colorado Springs Police Department, El Paso County, and The State of Colorado

United States District Court Case No. 2014cv00987-BNB

United States Court of Appeals for the Tenth Circuit Case No. 14-1198

CLAIM: Plaintiff claims false arrest by defective arrest warrant.

STATUS: April 10, 2014 Received via mail to Chief's office. May 1, 2014 Motion to Dismiss filed by Defendant Colorado Springs Police Department. May 7, 2014 Court issues Order of Dismissal. May 19, 2014 Plaintiff files notice of appeal. June 12, 2014 Plaintiff / Appellant files Opening Brief. July 9, 2014 10<sup>th</sup> circuit Court of Appeals issues order and judgment affirming District Court's judgment. July 31, 2014 Mandate issued.

(Total 27.4 Hours - Lamphere)

Wojdacz, Elizabeth v. Officer John Ireland, Patrick Miller, and Penrose-St. Francis Healthcare

United States District Court Case No. 12-cv-01483

CLAIM: Plaintiff alleges that the Colorado Springs Police Department and Defendants Grady, Officer Ireland failed to investigate multiple situations and file charges.

STATUS: June 26, 2012 Received copy of Complaint and Civil Cover Sheet. August 2, 2012 Plaintiff files amended complaint. City files motion to dismiss amended complaint or quash service, which is pending before the Court. Defendant Miller files Answer to amended complaint and jury demand; Defendant Penrose St. Francis files answer to amended complaint; Gary Norman files answer to Plaintiff's amended complaint. November 30, 2012 Defendant Penrose submits an amended motion to dismiss and for judgment on the pleadings. January 3, 2013 Recommendations of the United States magistrate judge entered regarding the City's motion to dismiss: All claims except the 4<sup>th</sup> amended against Officer Ireland should be dismissed. January 29, 2013 Defendant Penrose files reply to its motion to dismiss and for judgment on the pleadings. February 22, 2013 City files reply to Plaintiff's objections to magistrate's recommendations. On February 25, 2012, Court overrules objections and adopts the recommendation of the US Magistrate Judge. The City's motion to dismiss is granted in part and denied in part. Plaintiff's claims under Colorado Organized Crime Control Act, First Amendment, and Fourteenth Amendment against defendants Colorado Springs Police Department, Commander Brian Grady, and Officer John Ireland are dismissed without prejudice. Further Fourth Amendment against Colorado Springs Police Department and Commander Brian Grady are dismissed without prejudice. March 4, 2013 Magistrate Judge makes recommendation to grant both Penrose St Francis and Patrick Miller's motion to dismiss. March 11, 2013 Defendant Ireland files Answer to Amended Complaint. April 4, 2013 Court issues order overruling objections and adopting magistrate's recommendation dismissing Defendant's Miller and Penrose St Francis and judgment is entered in favor of Miller and Penrose dropping them as parties to this case. April 26, 2013 Defendant Hudson files response to default judgment and motion to dismiss all counts against Defendant Cliff Hudson which is denied without prejudice and stricken by the Court on April 30, 2013. August 30, 2013 Officer John Ireland files motion for summary judgment. September 23, 2013 Plaintiff files response to Officer Ireland's motion

for summary judgment. October 17, 2013 Magistrate judge files his recommendation that Officer Ireland's motion for summary judgment be denied. October 31, 2013 City files objection to recommendation to magistrate judge. November 12, 2013 Plaintiff files opposed motion for trial setting and opposed motion for status conference. December 3, 2013 Court issues orders denying both Plaintiff's motion for trial setting and motion for status conference. December 13, 2013 Court issues order sustaining the City's objection and rejecting the magistrate judge's recommendation, thereby granting Officer Ireland's motion for summary judgment and dismissing Officer Ireland with prejudice as Defendant. March 18, 2014 Defendant Hudson files answer to amended complaint which was stricken by the Court April 1, 2014. March 27, 2014 Court orders dismissal of all claims against Defendant Duncan. Four day trial set to commence May 5, 2014. May 15, 2014 A final judgment was issued and entered in favor of remaining defendants. June 10, 2014 Plaintiff filed motion for new trial. **October 6, 2014 Court denies Plaintiff's motion for a new trial. Deadline to file appeal November 5, 2014.**

Total 471.95 hours – Lamphere)

Wojdacz, Elizabeth v. Robert E. Blackburn; Michael E. Hegarty; Erik Lamphere; Kim DeLine; Michael Watts; Retherford, Mullen & Moore; Lindsey Topper; Colorado Springs City Police Department; Joel Kern; W. Lambert; Lt. Scott Whittington; Medina General Hospital; Akron Children's Hospital Medical Center of Akron; Ashland County Department of Human Services; and City of Colorado Springs

United States District Court Case No. 13-CV-01738-MSK

CLAIM: Plaintiff claims that Defendants violated Constitutional rights during the first case of a previous lawsuit filed with the United States District Court Case No. 12-CV-01483.

STATUS: July 17, 2013 Plaintiff served Summons and Complaint to Attorney Erik Lamphere. August 1, 2013 Lindsey Topper files Answer to Complaint. August 6, 2013 City Defendants file motion to dismiss. August 14, 2013 Plaintiff files motion to consolidate this case with her other pending action (detailed above). August 26, 2013 Plaintiff files amended complaint. September 3, 2013 Court issues order denying Plaintiff's motion to consolidate cases. September 9, 2013 City Defendants file motion to dismiss Plaintiff's amended complaint. September 12, 2013 Defendants Blackburn and Hegarty file motion to dismiss amended complaint. September 16, 2013 Defendant Topper files answer to amended complaint. October 4, 2013 Defendant Ashland files motion to dismiss. October 7, 2013 Defendants DeLine and Watts file motion to dismiss. October 9, 2013 Akron Children's Hospital files motion to dismiss. October 21, 2013 Plaintiff files responses to Defendants City and Judges Blackburn and Hegarty's motion to dismiss. October 24, 2013 Defendant Topper files motion to dismiss. October 31, 2013 Defendant Medina General Hospital files motion to dismiss. November 1, 2013 City Defendants and Judges Blackburn and Hegarty file their replies to their motions to dismiss. November 13, 2012 Plaintiff files response to Topper's motion to dismiss. November 21, 2013 Plaintiff files response to Medina's motion to dismiss. November 27, 2013 Plaintiff files responses to Retherford Defendants' (DeLine, Watts, and law firm of Retherford, Mullen, and Moore) Ashland's, and Akron's motions to dismiss. December 5, 2013 Medina files reply to its motion to dismiss. December 10, 2013 Defendant Ashland files reply to its motion to dismiss. December 12, 2013 Retherford Defendants file reply to their motion to dismiss. December 13, 2013 Defendant Topper and Defendant Akron file replies to their motions to dismiss. December 17, 2013 Defendant Medina files joinder to Akron's reply to motion to dismiss. August 5, 2014 Recommendation that all Defendants motions to dismiss be granted and that the Plaintiff's Rule

65 injunction for ex parte orders be denied. August 20, 2014 Plaintiff files multiple motions for summary judgments against all defendants and files written objections to magistrate's recommendations. **August 25, 2014 Court enters opinion and order overruling objections, adopting recommendation and dismissing action. All claims against all defendants are dismissed. August 27, 2014 Court enters final judgment and closes case. Deadline to appeal September 20, 2014.**

(Total 199.3 hours – Gendill)

## NEW CASES

Veronica Brtek, a minor, by and through her parents and natural guardians, Sergio De Lourenco and Anne Brtek and Sergio De Lourenco and Anne Brtek, individually v. Douglas W. Smith, N.P., Memorial Health System, Inc. and The City of Colorado Springs

El Paso County District Court Case No. 2014CV32494

CLAIM: Plaintiff claims negligence against Douglas Smith and liability under Colorado Governmental Act against City of Colorado Springs and Memorial Hospital alleging improper treatment at Briargate Urgent Care.

STATUS: Summons and Complaint served September 8, 2014

(Total 1.6 hours – Retherford, Mullen & Moore)

Chiddix Excavating, Inc., a Colorado Corporation v. Colorado Springs Utilities a subsidiary of City of Colorado Springs; and City of Colorado Springs, a Municipal Corporation

El Paso County District Court Case No. 2014CV34137

CLAIM: Plaintiff, an excavating company, claims after City wrongfully revoked Chiddix's license and violated Plaintiff's due process rights, took property without just compensation, deprived Plaintiff of private property among other claims.

STATUS: Summons and Complaint served November 18, 2014.

(Total 41.4 hours – Lamphere)

City and County of Denver; and City of Colorado Springs by and through its enterprise, Colorado Springs Utilities v. Solid and Hazardous Waste Commission; Hazardous Materials and Waste Management Division; U.S. General Services Administration; Buckley Air Force Base; City of Fort Collins; Excel Environmental, Inc.; Colorado Environmental Professionals Association; Regional Transportation District; and Herron Enterprises USA, Inc.

Denver District Court Case No. 2014CV34158

CLAIM: Plaintiff's claim that Defendants exceeded their scope of authority and that action is arbitrary capricious and contrary to constitutional right relating to regulations of disposal of solid waste.

STATUS: Plaintiff files Complaint October 31, 2014. November 14, 2014 Answer received for Colorado Solid and Hazardous Waste Commission. November 17, 2014 Plaintiff's file First Amended Complaint for Judicial Review of Agency Action.

(Total \_\_ hours – Griffith)

Timothy Ives v. Adan Padilla

El Paso County District Court Case No. 14CV33120

CLAIM: Plaintiff Ives filed Complaint on October 8, 2014 as a result of tortuous conduct of Defendant Padilla relating to a motor vehicle accident. The City seeks to intervene in an effort to recover subrogation rights equal to workers' compensation benefits paid to the Plaintiff.

STATUS:

(Total 17.8 hours – Lamphere)

Bryan Koenig v. Terry E. Thurmston, in their individual capacity; Jennene Scott, in their individual capacity; and Jodi Germano, in their individual capacity

United States District Court Case No. 14-cv-01490-RM-MJW

CLAIM: Plaintiff alleges Defendants violated his Fourth and Fourteenth Amendment rights when arrested in 2012.

STATUS: Summons and Complaint served September 10, 2014. October 1, 2014 City Defendants' file Answer and affirmative defenses. October 29, 2014 Plaintiff files motion for first amended complaint which is granted by Court on October 30, 2014. October 31, 2014 City and County Defendants file joint motion to stay discovery. November 12, 2014 Defendants Thurmston and Scott file motion to dismiss first amended complaint; Defendant Germano also files motion to dismiss plaintiff's amended complaint.

(Total 73.4 hours – White)

Ethan Pace v. Blanco Caro, individually and in her official capacity, and the City of Colorado Springs, Colorado

United States District Court Case No. 14-cv-02603-JLK

CLAIM: Plaintiff alleges Defendants violated his Fourth and Fourteenth Amendment rights claiming unreasonable seizure, deprivation of liberty without due process.

STATUS: Summons and Complaint served October 6, 2014. October 27, 2014 City files Answer and Affirmative Defenses of Blanca Caro to Complaint and Motion to Dismiss Defendant City of Colorado Springs.

(Total 29 hours – White)

Joshua Bryan Palmer v. City of Colorado Springs, a Municipal Corporation, Anthony Carey an employee of the Colorado Springs Police Department Individually and in his official capacity, Trevor Gardner an employee of the Colorado Springs Police Department Individually and in his official capacity, Jordan Swanberg an employee of the Colorado Springs Police Department Individually and in his official capacity

~~El Paso County District Court Case No. 2014CV32868~~

**United States District Court Case No. 2014CV02659**

CLAIM: Plaintiff brings civil rights action 42 U.S.C. § 1983 alleging warrantless entry of his apartment, unlawful search and seizure and false arrest among six other claims for relief.

STATUS: Summons and Complaint served September 16, 2014. September 26, 2014 Defendants file notice of removal to US District Court. October 7, 2014 City Defendants file motion to dismiss Plaintiff's claims three through nine; and files Answer and Affirmative Defenses to Plaintiff's Complaint. October 28, 2014 Parties file stipulation of voluntary dismissal pursuant to F.R.C.P. 41(a)(1)(A)(ii).

(Total 69.3 hours – Gendill)

The properties 2729 and 2920 N. Prospect Street, Colorado Springs, CO 80907, Justin Kruse, and Two Whole Sailors, a Colorado LLC v. The City of Colorado Springs, A body politic and corporate and a home rule city political subdivision of the State of Colorado; the Colorado Springs Police Department; Officer E. Frederic, CSPD; and all other as yet unidentified police officers involved in the search and seizure here involved

El Paso County District Court Case No. 2014CV33278

CLAIM: Plaintiff brings claim for affirmative injunctive relief to continue existing business and relief of mandamus due to alleged unlawful search and seizure.

STATUS: October 24, 2014 Summons and Emergency Complaint for Relief in the Nature of a Writ of Mandamus pursuant to Rule 106, C.R.C.P.; and for a Mandatory Affirmative Injunction filed by the Plaintiff. October 24, 2014 Court takes no action on the order regarding emergency mandatory affirmative injunction and states to complete service of process and after service is accomplished to set matter for hearing. Defendants file motion to dismiss. Response and reply filed.

(Total 16.6 hours – Lamphere)

## CURRENT CASES

### AIRPORT

(OC)

Scott, Danielle v. The City of Colorado Springs

United States District Court Case No. 12-cv-01028

CLAIM: Plaintiff, an Accounting Supervisor at the Colorado Springs Airport, alleges that due to manufactured allegations against her in 2010, she was discriminated against multiple times due to race. She also claims she was retaliated against for engaging in protected activity. Plaintiff alleges she was denied more than one promotion, adequate training, and that there is a pattern and practice of disparate treatment of black employees. Plaintiff seeks damages.

STATUS: On June 15, 2012 City filed motion to dismiss Plaintiff's fourth claim for relief; City filed Answer and jury demand. Court granted City's motion to dismiss fourth claim for relief. Discovery has commenced. March 27, 2013 Defendants file motion for summary judgment of Plaintiff's claims. June 10, 2013 Plaintiff files Response in opposition to Defendant's motion for summary judgment. June 24, 2013 Defendants file reply to its motion for summary judgment of Plaintiff's claims pursuant to F/R/C/P/ Rule 56 and request for oral argument. Hearing on Defendant's motion for summary judgment held September 9, 2013 at 2:00 p.m. Court stays case, including discovery pending Plaintiff's receipt and filing of EEOC's notice of right to sue and an amended complaint is filed with new charges after termination. Plaintiff filed First Amended Complaint and Jury Demand on February 14, 2014. The court dismissed the Defendant's Motion for Summary Judgment as Moot, and Defendant filed the Answer to Amended Complaint on March 13, 2014. A status conference was held April 25<sup>th</sup>, 2014 regarding discovery, and the discovery cutoff deadline is September 15, 2014. Plaintiff Scott propounded Plaintiff's Third Written Discovery Requests, with responses due by the City on August 1, 2014. **A settlement conference is scheduled for January 8, 2015, and Jury Trial is set for June 8, 2015.**

(Total 201.4 hours – Lessig / Richard Orona – Mullins, Piersel & Reed, P.C.)

CITY CLERK

The Colorado Springs Citizens for Community Rights' Petition Committee v. City of Colorado Springs, Colorado

El Paso County District Court Case Number 13CV2082

CLAIM: Plaintiff files Complaint seeking declaratory and injunctive relief regarding the Colorado Springs Title Review Board's May 2, 2013 final decision concerning Proposed Charter Amendment IO 2013-001, known as "Community Bill of Rights Protection from Natural Gas & Oil Production" which sought regulation on oil and gas exploration, including fracking within the jurisdiction of the City of Colorado Springs. The Title Board rejected the Proposed Charter Amendment.

STATUS: May 23, 2013 Summons and Complaint served. July 8, 2013 Defendant City files Answer; City files partial Motion to Dismiss. August 5, 2013 Plaintiff files response to Defendants' partial motion to dismiss. August 12, 2013 Defendants file reply brief in support of their motion to dismiss (partial). September 4, 2013 Court files order regarding motion to dismiss denying Defendants motion to dismiss (partial). September 12, 2013 Defendant files answer to Plaintiff's Second Amended Complaint. November 8, 2014 Status conference held in which Court requests that parties submit briefs to Court regarding whether C.R.C.P. 106(a)(2) or 106(a)(4) applies. November 14, 2013 Plaintiffs file notice to the Court of their filing a proposed brief of amicus curiae in *McCarville v. City* appeal, as well as the Court of Appeal's denial of their application to participate as amicus curiae. December 6, 2013 City files supplement to Plaintiff's notice to the Court of the Court of Appeals' action in *McCarville*, including the Court of Appeals' ruling affirming the District Court's ruling in favor of the City and concluding that the City's ordinances pertaining to a citizen-initiated charter amendment do not conflict with State statute provisions (see entry detailed below). January 17, 2014 Parties file briefs regarding whether C.R.C.P. 106(a)(2) or 106(a)(4) applicable rule of procedure governing action. January 31, 2014 Plaintiff files response brief. February 7, 2014 Court files order regarding choice of law and states that Colorado Springs City Ordinance 5.1.503(A) (and (B) and the rest of Part 5 are enforceable; the Plaintiff is not entitled to relief under C.R.C.P. 106(a)(2) and Plaintiff's third claim for relief in Second Amended Complaint for Declaratory Judgment and Injunctive Relief is dismissed. Plaintiffs second and fourth claims remain; Colorado Springs to bring fourth "record" of proceedings held by the Title Board. Defendants to file certified record by March 14, 2014. February 28, 2014 Plaintiff files Motion for Final Judgment on First and Third Claims and Motion for Stay on Plaintiff's Second and Fourth Claims for Relief and City responds on March 13, 2014. March 14, 2014 City files certified record of proceedings. April 10, 2014 Plaintiff files unopposed motion to dismiss with prejudice Plaintiff's Second and Fourth Cases of Action. April 14, 2014 Court dismisses second and fourth claims with prejudice. June 2, 2014 Citizens file Notice of Appeal. Parties file designation of records. **August 26, 2014 Notice of electronic record certified to Court of Appeals. September 24, 2014 Notice of filing of record on appeal. Opening brief filed November 5, 2014. Court of appeals struck Plaintiff's opening brief due to deficiencies. Plaintiffs have 14 days to correct deficiencies and refile brief.**

(Total 318 hours – Gendill/McCall).

Fortner, Darrell and Jennifer Fortner d/b/a Diamond/Dundee Tree Service v. The City of Colorado Springs; Kathryn Young, individually and in her official capacity as City Clerk of Colorado Springs, Darrel Pearson, individually and in his official capacity as City Forrester of

Colorado Springs, James A. Choate, in his individual capacity as Sergeant for El Paso County Sheriff's Office, Terry Maketa, in his individual capacity as Sheriff of El Paso County, Colorado, and James E. McGannon, individually and in his official capacity as City Forrester for the City of Colorado Springs.

United States District Court Case No. 06-CV-02148-BNB;

United States Court of Appeals for the Tenth Circuit Case No. 13-1394

CLAIM: Plaintiffs' remaining claims are that Defendant Young violated their due process rights by holding an appeal hearing before City Council without their presence or their attorney's presence after their business license had been denied. Plaintiffs further claim that Defendants McGannon and Pearson illegally arrested and prosecuted them for operating a business without a license. As to the County Defendants, Plaintiffs claim that Darrell Fortner's name was placed on a sex offender registry without just cause.

STATUS: Numerous Defendants have been dismissed from the case by the Court through motions to dismiss, summary judgment motions and hearings. City has filed motions to dismiss on the first and second amended complaints with objections to all following amended complaints. Court denied Plaintiff's motion for a fifth amended complaint. In August 2008, City filed a Motion for Summary Judgment which was denied without prejudice by the Court stating the City may resubmit motion for summary judgment stating which claims should be barred by res judicata. In March 2009 City files second motion for summary judgment. Magistrate judge makes recommendations stating the judge should: 1) grant City's motion for summary judgment as to claims against Pearson for allegedly striking Plaintiff; claims against the City for actions from May, 1994 through 1996 alleging harassment, conspiracy, unlawful arrest, suspension of Plaintiffs' tree business license, and failure to properly supervise and train; and failure to renew Plaintiff's tree service license in 1997; and denying the motion as to all other claims against the City and 2) granting County's motion for summary judgment as to due process claims and denying its motion on Plaintiff's state law tort claims. In January 2010, Court issues orders accepting magistrate's recommendation as to City's motion for summary judgment and denying magistrate's recommendation as to denial of acceptance of County's supplemental motion for summary judgment. County seeks enforced settlement agreement from Plaintiff after Plaintiff "backed out". Evidentiary hearing held on January 7, 2013. March 4, 2013 Court issues order granting County's motion to enforce settlement of \$9,900; Defendants James Choate and Terry Maketa are dismissed from this action. 5 day trial to the Court is set for June 1, 2013. March 29, 2013 Plaintiff filed motion in limine. April 5, 2013 Defendant files response to Plaintiff's motion in limine. April 10, 2013 Court denies Plaintiff's motion in limine. June 3, 2013 Trial preparation conference was held: Judge denied motion to vacate trial date, denied motion to reinstate City of Colorado Springs, motion to consider attorney fees, motion to file motion to strike defendant's exhibits, and motion to withdraw exhibits. Court enters an order of sequestration for witnesses. June 10-11, 2013 trial to Court held. August 20, 2013 Court issues Findings of Facts, Conclusions of Law, and Order that judgment shall enter in favor of the City Defendants and against Plaintiffs Defendants are awarded costs on the filing of a bill of costs. August 21, 2013 Judgment is entered and the action is dismissed on the merits and Defendants are awarded costs. August 28, 2013 Defendants file proposed bill of costs. Costs awarded in the amount of \$1,700.46. September 23, 2013 Plaintiffs' file Notice of Appeal. All parties have entered their appearance.. October 23, 2013 Record on appeal filed. February 12, 2014 Appellant's opening brief filed. March 18, 2014 Appellees files revised Answer Brief. May 5, 2014 Appellant Fortner files reply brief. **September 16, 2014 U.S. Court of Appeals files**

**Order and Judgment affirming District Court's ruling. October 8, 2014 Mandate issued. Plaintiff have 90 days from date of judgment to file appeal with U.S. Supreme Court.**  
(Total 970.7 hours – White)

McCarville, Roger v. City Of Colorado Springs

El Paso County District Court Case No. 12CV306;

Colorado Court of Appeals Case No. 2012CA2593

CLAIM: Plaintiff alleges that the City of Colorado Springs' pre-petition process, i.e. the IRC and Title Board, are unconstitutional as applied to Charter amendment petitions. Plaintiff further alleges that the City's single subject rule is unconstitutional.

STATUS: Complaint and Summons received August 3, 2012. August 14, 2012 Plaintiff files notice to set hearing. On October 19, 2012 City files motion for summary judgment, which was granted on November 16, 2012. On December 24, 2012 Appellant files notice of appeal in Colorado Court of Appeals. January 15, 2013 Designation of Record filed. January 18, 2013 Appellee files additional designation of record. May 10, 2013 Appellant files his Opening Brief. June 4, 2013 A Motion for leave to participate as Amicus Curiae in Support of Appellant McCarville is filed by Colorado Springs Citizens for Community Rights. A Brief of Amicus Curiae is also filed. June 13, 2013 Appellee files Answer brief. July 1, 2013 Appellant McCarville files his reply brief. July 3, 2013 Court denies brief of Colorado Springs Citizens for Community Rights. December 5, 2013 Court of Appeals issues opinion, affirming judgment for the City and determining that the City's ordinances pertaining to a citizen-initiated ordinance do not conflict with State statute provisions. December 30, 2013 Appellant files petition for certiorari to the Colorado Supreme Court. January 9, 2014 City files opposition brief to petition for writ of certiorari. February 13, 2014 Appellant files Supplement/Update to Notice of Appeal / Petition for Writ of Certiorari. March 1, 2014 Appellant file motion to file supplement / update to notice of appeal / Petition for Writ of Certiorari and Court grants the supplement for filing on March 25, 2014. June 3, 2014 Petitioner files motion for ruling which is denied by the Court on June 9, 2014. **September 2, 2014 Colorado Supreme Court denies Peitioner's Petition for Writ of Certiorari. September 8, 2014 Court of Appeals issues Mandate affirming judgment.**

(Total 103 hours – White)

CITY ENGINEERING

Clark, Debra v. Joanne Colby, Sharon Blake and the City of Colorado Springs

El Paso County District Court Case No. 2013CV31610

CLAIM: Plaintiff claims that Defendants knew or should have known that the sidewalk at 2720 Wood Avenue created a dangerous condition. Plaintiff was walking her dog and tripped over the raised sidewalk causing damages.

STATUS: October 23, 2013 Summons and Complaint served. November 13, 2013 City files answer to Plaintiff's complaint. 4-Day Jury Trial scheduled to begin December 15, 2014. **Discovery ends October 27, 2014. Mediation scheduled for November 21, 2014. November 14, 2014 City Defendant files Motion to Dismiss; files motion in limine to strike expert testimony.**

(Total 237.95 hours – Gendill)

Contract Management Inc, d/b/a US Roads v. City of Colorado Springs and Pikes Peak Rural Transportation Authority.

El Paso County District Court Case No. 2013CV30652

CLAIM: US Roads was awarded a contract through an Invitation to Bid to perform certain road improvements to Platte Avenue in Colorado Springs (the “Project”). Plaintiff claims City Defendants breached the contract that was executed on July 29, 2011 and received unjust enrichment at the expense of US Roads.

STATUS: July 26, 2013 Summons and Complaint served. August 16, 2013 Defendants City of Colorado Springs and Pikes Peak Rural Transportation Authority files stipulated motion for a two week enlargement of time to file a responsive pleading to Plaintiff’s Complaint. August 29, 2013 City Defendants files Answer with Jury Demand. September 24, 2013 Defendant PPRTA files answer to first claim for relief and motion to dismiss Plaintiff’s second and third claims for relief pursuant to C.R.C.P. 12(b)(5). October 15, 2013 Plaintiff files response to Defendant PPRTA’s motion to dismiss. November 1, 2013 PPRTA files its reply to its motion to dismiss. November 5, 2013 Court denies PPRTA’s motion to dismiss and directs the parties to set a case management conference. November 19, 2013 PPRTA files amended answer and affirmative defenses. Discovery commences. June 16, 2014 Defendant City of Colorado Springs files Motion for Summary Judgment. June 24, 2014 Court allows City to refile motion for summary judgment. July 28, 2014 Plaintiff files response to Defendant City’s motion for summary judgment. August 8, 2014 Defendant City files reply in support of its motion for summary judgment. August 11, 2014 City files motion in limine to exclude evidence of damages and exclude irrelevant evidence. Mediation scheduled for August 21, 2014. **August 29, 2014 The Trial which was set for September 15, 2014 was continued by the Judge after an order of recusal. September 4, 2014 Notice of stipulation for dismissal of Defendant Pikes Peak Rural Transportation Authority. A six day trial was rescheduled to begin March 30, 2015.**  
(Total 1057.1 hours – Gendill)

IN THE MATTER OF THE APPLICATION AND REQUEST FOR WAIVER OF THE CITY OF COLORADO SPRINGS FOR AUTHORITY TO FORMALIZE A SHARED USE TRAIL AND CROSSING, INSTALL WARNING DEVICES AND IMPROVED APPROACH AT THE CROSSING OF THE MANITOU & PIKES PEAK COG RAILWAY TRACK ON THE NORTH LAKE MORaine CONNECTOR AT 38 @ 50’ 01.6”N, 104@ 59’26.94”W IN EL PASO COUNTY, COLORADO

Public Utilities Commission of the State of Colorado Docket NO. 12A-006R

APPLICATION: The City applies to the Public Utilities Commission for authorization to formalize a shared-use trail and crossing, install warning devices and improved approach at the crossing of the Manitou & Pikes Peak COG Railway track and requesting a waiver of the Commission’s rule requiring Pedestrian crossings to be Grade Separated.

STATUS: City files notice of application and petition. Commission order deems application complete, grants application, and grants petition for variance.

(Total 37 hours – M. Smith)

COUNCIL

(OC)

Bruce, Douglas v. City of Colorado Springs and Does I through XX

El Paso County District Court Case Number 2013CV268

**CLAIM:** Plaintiff alleges unlawful activity by the City regarding Council Benefits, Attorney Compensation, Violations of Issue 300, Sales Tax Vendor Retention, and Utility Turn on Charges, Customer Water Usage, Appointee Review and Appropriation of Salaries and requests proper injunctive and declaratory relief.

**STATUS:** August 2, 2013 Summons and Complaint served. August 23, 2013 City files its Answer. September 18, 2013 PERA files motion to intervene. October 25, 2013 PERA files motion to dismiss first cause of action. October 28, 2013 Plaintiff files motion to amend complaint and motion for default judgment against City, asserting City being represented by outside counsel illegally. November 13, 2013 City files responses to Plaintiff's motion to amend complaint and motion for default judgment. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 15, 2013 Plaintiff files answer to PERA's motion to dismiss first cause of action. November 18, 2013 Plaintiff files reply to his motion for default judgment; Plaintiff files reply to his motion to amend complaint. December 3, 2013 Court denies Plaintiff's Motion for Default Judgment. December 18, 2013 Plaintiff files amended complaint. January 2, 2014 City files answer to Plaintiff's amended complaint. January 13, 2014 City files 1) motion to dismiss cause of action 3 and motion for summary judgment as to causes of action 4 and 8 and 2) motion to dismiss causes of action 1, 2, 5, 6, and 7. Plaintiff files response to City's Motions 1) and 2) above on February 4, 2014 and February 6, 2014, respectively. February 17, 2014 City files reply in support of motion to dismiss causes 1, 2, 5, 6, and 7 and separate reply in support of motion to dismiss causes 4 and 8. March 2, 2014 Court rules on City's motions to dismiss and motion for summary judgment: 1) the first cause of action is dismissed as to Councilmember participation in PERA, but not as to travel and meeting expenses; 2) the second cause of action is dismissed as to the City Attorney's ability to hire outside counsel, but not as to the setting of the City Attorney salaries; 3) the fifth cause of action is dismissed in its entirety; and 4) the City's motions to dismiss third cause of action and motion for summary judgment on fourth and eighth causes are denied. March 6, 2014 the parties participate in a case management conference, as a result the April trial is vacated and reset to November 2014. At the CMC, deadlines for discovery, Rule 56 motions, motions in limine, and substantive motions are set. March 17, 2014 Plaintiff files a motion for reconsideration of the partial dismissals. April 7, 2014 PERA and the City file responses to the motion for reconsideration. April 7, 2014 the Court denies Plaintiff's motion for reconsideration. On March 18, 2014 the City takes Plaintiff's deposition. The City has received the draft transcript, but an amendment sheet has not been received yet. Written discovery is ongoing but not without issues. April 18, 2014 the parties participate in a lengthy discovery hearing. April 25, 2014 Plaintiff provides non-responsive and evasive responses to the City's first set of discovery requests. May 5, 2014 the City files a motion to compel responses to the City's first set of discovery requests. The City owes responses to Plaintiff's written discovery request by May 8, 2014; however the Court ruled that the City could recover the cost of time and copies for the discovery response. The discovery cutoff is May 30, 2014. May 23, 2014 the City provided its Response to Plaintiff's Amended First Discovery. May 29, 2014 the Court grants the City's Motion to Compel. Plaintiff files an objection to the Order granting the motion to compel and Plaintiff requests sanctions but on June 16, 2014 the Court denies Plaintiff's objection and request for sanctions. On June 17, 2014 Plaintiff files Plaintiff's Inquiry on Pre-Trial Status. On July 16, 2014 the Court files an order stating that it has reviewed Plaintiff's June 17, 2014 filing. July 1, 2014 City files motion for ruling on questions of law on Plaintiff's

remaining claims in causes of action 1, 2, 3, 4, 6, and 7 pursuant to C.R.C.P. 56(h). City also files motion for sanctions. July 28, 2014 Plaintiff filed responses to motion for sanctions and motion for ruling on questions of law. August 4, 2014 City files Reply in Support of its Motions. August 8, 2014 Court issues lengthy order addressing each of the remaining claims and dismisses Plaintiff's causes of action 1, 2, 3, 4, 6 and 7. **August 18, 2014 Court issues an Order directing Plaintiff to file his Motion to Certify Class by September 8, 2014. August 18, 2014 Court also issues an Order directing Plaintiff to set a case management conference to hear argument on the City's Motion for Sanctions and address Plaintiff's ability to represent a class on the 8<sup>th</sup> cause of action. August 22, 2014 the City files a Motion for Leave to File Motion for Ruling on Questions of Law Relating to Plaintiff's 8<sup>th</sup> Cause of Action Pursuant to CRCP 56(h). September 2, 2014 Plaintiff files his Motion to Certify Class. September 9, 2014 Plaintiff files a response to the City's Motion for Leave. September 16, 2014 City files Reply in Support of Motion for Leave. September 19, 2014 the Court grants the City's Motion for Leave to File Motion for Ruling on Questions of Law. September 23, 2014 City files its Hearing Brief. September 26, 2014 City files a Motion to Consider Hearing Brief as City's Response to Plaintiff's Motion to Certify Class, which Motion was granted by the Court on September 30, 2014. October 9, 2014 Court grants Motion for Sanctions and sets deadline of 21 days for the City to file a Bill of Costs related to the Discovery Sanctions. October 10, 2014 Court denies Plaintiff's Motion to Certify Class. October 14, 2014 city files Motion for Ruling Pursuant to CRCP 56(h) on Plaintiff's 8<sup>th</sup> Cause of Action. Also on October 14, 2014 the Court holds a Case Management Conference. October 24, 2014 Court grants Defendant's motion for ruling pursuant to C.R.C.P. 56(h) on Plaintiff's eighth cause of action. October 30, 2014 City files a Bill of Costs Pursuant to the Order on Motion for Sanctions. November 4, 2014 Plaintiff files an Objection to the City's Bill of Costs, a reply thereto is due on November 12, 2014. The City's Bill of Costs relating to final judgment in the case is due November 14, 2014. The trial has been vacated.**

(Total 166 hours – Hayes, Phillips, Hoffman and Carberry / White)

MLP Receiverships, LLC, as Receiver; Probuild Company LLC; and PNC Bank, NA v. The City of Colorado Springs, a Colorado home rule city and municipal corporation; and City Council of the City of Colorado Springs in their official capacity.

El Paso County District Court Case Number 2013CV1973

CLAIM: MLP Receiverships file a Request for Judicial Review under Rule 106(a)(4) and complaint claiming 14<sup>th</sup> amendment due process, estoppels and taking for City's stopping of permit construction of Dublin Townhomes and refusal to approve amended application.

STATUS: April 23, 2013 Complaint filed with motion to certify the record. May 13, 2013 Plaintiff files Amended Complaint. May 17, 2013 City files waiver and acceptance of service; Plaintiff files motion to consolidate or in the alternative motion to transfer rule 106 action to Division 19 with PNC Bank, et al. v. Heritage Homes, et al. El Paso County Case Number 2012CV3256. June 7, 2013 City files Answer to First Amended Complaint and response in opposition to motion to certify the record and response to motion to consolidate and a partial motion to dismiss. June 13, 2013 MLP Receivership files replies to City responses regarding motion to certify record and motion to consolidate. June 19, 2013 Defendant City files motion for leave to file sur-reply re: motion to certify the record for C.R.C.P. 106(a)(4). June 20, 2013 City files joint motion to bifurcate and for partial stay. June 27, 2013 Court grants order which

stipulates transferring Rule 106 action to Division 19. August 14, 2013 Court grants order to bifurcate and for partial stay; Court orders Defendants shall prepare, certify and file docs within 60 days for certification of the record. September 12, 2013 Defendants file certified record of proceedings. October 24, 2013 Plaintiff files opening brief and request for oral argument. November 27, 2013 City files answer brief. December 23, 2013 Plaintiff files reply brief. Oral Argument is set for February 25, 2014. March 27, 2014 Court files C.R.C.P. Rule 106(a)(4) Review stating that City Council abused their discretion in the appeal and the issue is remanded back to Colorado Springs City Council for rehearing. April 11, 2014 Court orders that the remaining claims in the case shall be stayed pending resolution of the C.R.C.P. 106(a)(4) issues on remand to the Colorado Springs City Council. July 10, 2014 Plaintiff files Status Report. **October 27, 2014 Plaintiff files status report stating that City notified counsel that a hearing regarding the Amended Development Plan has been scheduled for January 13, 2015 at City Council. Court Ordered remand and rehearing before City Council set for January 13, 2015.**

(Total 343.3 hours – Gendill)

## FACILITIES

(OC)

Smokebrush Foundation, Katherine Tudor and Donald Herbert Goede, III v. City of Colorado Springs and Hudspeth & Associates, Inc.

El Paso County District Court Case No. 2013CV1469

CLAIM: Plaintiffs claim that Defendants allowed asbestos, heavy metals and other toxic substances to migrate offsite during demolition of 25 Cimino Drive in a harmful manner and seek claims for relief of strict liability, negligence, trespass, nuisance and negligence *per se*.

STATUS: March 20, 2013 Summons and Complaint served. April 12, 2013 Hearing regarding Motion for Preliminary Injunction concerning condition of property. April 16, 2013 Plaintiffs file Motion for a Temporary Restraining Order (“TRO”). April 18, 2013 Defendant City of Colorado Springs files Motion to Dismiss, amended. April 19, 2013 Defendant Hudspeth files Response to Motion for TRO; Defendant City files Response to Motion for TRO; Defendant Hudspeth files Motion to Stay re: CRS §13-20-803.5(9). May 7, 2013 Plaintiff files Amended Complaint. August 2, 2013 City files motion to dismiss. August 23, 2013 Plaintiffs file response to City’s motion to dismiss. September 6, 2013 City files reply to its motion to dismiss. On September 25, 2013, the Court issued an order concluding that there are factual issues that are potentially relevant and ordered that a *Trinity* hearing would be necessary to resolve the issues stated in the motion. A *Trinity* hearing regarding the motion to dismiss was set for November 15, 2013, but was rescheduled to November 20, 2013. December 20, 2013 Court issues order denying City’s motion to dismiss and finding that some or all of Plaintiff’s damages were caused by the operation of a public building and the maintenance and operation of a gas facility, thereby waiving the City’s immunity. January 8, 2014 City files Answer and Affirmative Defenses. February 4, 2014 City files notice of appeal and designation of record on appeal. March 14, 2014 Defendant City files Brief regarding Stay of Case. March 14, 2014 Defendant Hudspeth files Motion for Stay. March 14, 2014 Plaintiffs’ file Brief in Partial Opposition to Stay. March 28, 2014 Second Case Management Conference in which Court grants motion to file Amended Answer; Court grants Motion to Stay; Plaintiffs to set Status Conference after receiving Mandate from COA. April 25, 2014 Defendant/Appellant City files

Trinity Hearing Exhibits with Trial Court regarding Record on Appeal. May 5, 2014 Trial Court files Certificate of Mailing of Record on Appeal to COA. July 23, 2014: Def/Appellant City files Opening Brief. July 29, 2014, Def/Appellant City files Motion to Supplement Records on Appeal. **August 22, 2014 Court gives notice of Filing Supplemental Record. September 26, 2014, Pl/Appellees' file Answer Brief. October 16, 2014 Def/Appellant City files Reply Brief. October 23, 2014 Pl/Appellees' Request Oral Argument.**

(Total 101.2 hours – Rob Zavaglia at Treece Alfrey Musal, P.C. / White)

## FINANCIAL AND ADMINISTRATIVE SERVICES

(CC)

In RE Banning Lewis Ranch Company, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13445 (KJC)

*and*

In RE Banning Lewis Ranch Development I & II, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13446 (KJC) (Jointly administered).

**CLAIM:** The Banning Lewis Ranch Co. LLC and Banning Lewis Ranch Development I & II LLC, filed Chapter 11 petitions in the U.S. Bankruptcy Court in Delaware, citing more than \$242 million in debts. The two companies own the 21,400-acre ranch that stretches from Woodmen Road to Fontaine Boulevard between Marksheffel and Meridian roads.

**STATUS:** Court approved sale of property to Ultra Resources; action moved to Colorado bankruptcy court to determine whether City land-use agreements including the BLR annexation agreement should remain in effect. On May 1, 2012, the City, Ultra and Debtor BLRC filed a joint motion to hold the adversary proceeding in abeyance until November 1, 2012, while the parties attempt to resolve the matter consensually. July 25, 2012 USBC District of Delaware Court orders the Debtor The Banning Lewis Ranch Company, LLC to sell the 72 acre parcel that was formerly the directors' parcel to Bahr Holdings LLC. Court grants the parties request to hold the Ultra Adversary Proceeding in abeyance until April 1, 2013 and requires the parties to file another status report not later than April 1, 2013. On April 1, 2013, the City and Ultra filed a Second Joint Status Report and Motion for Further Stay of Adversary Proceeding (the "Second Joint Motion"). In the Second Joint Motion, the City and Ultra requested a further stay of all proceedings until July 1, 2013. By order entered on April 3, 2013, the Court granted the Second Joint Motion, stayed the adversary proceeding until July 1, 2013, and directed the parties to file another status report no later than July 1, 2013. On June 28, 2013, the City and Ultra filed a Third Joint Status Report and Motion for Further Stay of Adversary Proceeding (the "Third Joint Motion"). In the Third Joint Motion, the City and Ultra requested a further stay of all proceedings until November 1, 2013. By order entered on July 1, 2013, the Court granted the Third Joint Motion, stayed the adversary proceeding until November 1, 2013, and directed the parties to file another status report no later than November 1, 2013. On November 1, 2013, the City and Ultra filed the Fourth Joint Status Report and Motion For Further Stay Of Adversary Proceeding (the "Fourth Joint Motion"). In the Fourth Joint Motion, the City and Ultra requested a further stay of all proceedings until January 14, 2014. By order entered on November 4, 2013, the Court granted the Fourth Joint Motion, stayed the adversary proceeding until January 14, 2014, and directed the parties to file another status report not later than January 14, 2014. On

January 14, 2014, the City and Ultra filed the Fifth Joint Status Report and Motion For Further Stay Of Adversary Proceeding (the "Fifth Joint Motion"). In the Fifth Joint Motion, the City and Ultra requested a further stay of all proceedings until March 17, 2014. By order entered on January 28, 2014, the Court granted the Fifth Joint Motion, stayed the adversary proceeding until March 17, 2014, and directed the parties to file another status report not later than March 17, 2014. On March 17, 2014, the City filed a Status Report with the Court advising the Court that the parties were unable to reach a consensual resolution and had decided to move forward in the Adversary Proceeding. On March 17, 2014, Ultra and the Debtor filed a Motion to Terminate the Stay of the Adversary Proceeding and Request for a Scheduling Conference. On March 19, 2014, the City filed its Response to the Motion to Terminate the Stay. On March 21, 2014, the Court entered its order terminating the stay of the Adversary Proceedings and (a) directed the parties to file responses to the Motion to Intervene filed by Randle W. Case on or before April 1, 2014; (b) directed Ultra and the Debtor to reply to the City's amended counterclaims by April 17, 2014; (c) directed the parties to conduct a Rule 26(f) conference and submit an amended Rule 26(f) report by April 23, 2014; and (d) scheduled a status and scheduling conference for April 30, 2014. On April 1, 2014, Ultra and the Debtor filed their Response to the Motion to Intervene and stated their opposition to the Motion to Intervene. On April 1, 2014, the City filed its Response to the Motion to Intervene and stated its support for the Motion to Intervene. On April 3, 2014, Ultra and the Debtor filed their Motion for Partial Summary Judgment and argued that the Court should enter a declaratory judgment that the Annexation Agreement is an executory contract that can be rejected. On April 10, 2014, Mr. Case filed his Reply in Support of Motion to Intervene. On April 17, 2014, Ultra and the Debtor filed their Reply to the City's Amended Counterclaims. On April 23, 2014, the parties filed the Amended Rule 26(f) Report. On April 30, 2014, the parties appeared for the status and scheduling conference. During the conference, the Court set a deadline of May 30, 2014, for the City to file its own motion for partial summary judgment and a motion to join necessary parties. The Court also stated that discovery would not go forward until the Court had ruled on the motions for partial summary judgment. On May 5, 2014, Mr. Case filed his Response to Ultra's and the Debtor's Motion for Partial Summary Judgment. On May 5, 2014, the City filed its Response to Ultra's and the Debtor's Motion for Partial Summary Judgment. On May 30, 2014, the City filed the City's Motion to Require Joinder of Absent Annexors in Banning Lewis Ranch (the "Joinder Motion") and the City's Motion for Partial Summary Judgment (the "Summary Judgment Motion"). In the Joinder Motion, the City argued in substance that all of the annexors within Banning Lewis Ranch should be joined as parties to the litigation because Ultra seeks to adversely affect their interests. In the Summary Judgment Motion, the City argued in substance that the Court should grant summary judgment in favor of the City and declare that (a) the Annexation Agreement is not an executory contract that can be rejected pursuant to Section 365 of the Bankruptcy Code and (b) the property Ultra acquired from the Debtor remains subject to the Annexation Agreement because the sale of the property to Ultra was not free and clear of the Annexation Agreement pursuant to Section 363(f) of the Bankruptcy Code. On June 2, 2014, Ultra filed its reply brief in support of its motion for partial summary judgment and in reply to the responses filed by the City and Mr. Case to Ultra's motion for partial summary judgment. On June 10, 2014, Nor'wood Development Group issued a press release stating that Ultra had contracted to sell the property to Nor'wood subject to completion of due diligence. On July 7, 2014, Ultra filed its response to the City's Joinder Motion and Summary Judgment Motion. On July 30, 2014, the City filed its reply briefs in further support of the

City's Joinder Motion and Summary Judgment Motion and in reply to Ultra's responses in opposition to those motions. On July 31, 2014, the Court set a telephonic status conference to be held on October 1, 2014, at 10:00 am. **On August 26, 2014, the Court entered an order allowing Ultra to file sur-reply briefs in response to the City's reply brief in support of its motion for summary judgment and in support of its motion to join the other annexors as necessary parties. At the status conference held on October 1, 2014, the Court scheduled oral argument on the summary judgment motions for December 12, 2014.**

(Total 313.5 hours Massey – Florczak City Attorney's Office / William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal at Sherman and Howard (Denver))

BRIDGERS, CANDICE ZAMORA v. THE CITY OF COLORADO SPRINGS, by and through its CITY COUNCIL, the governing body for the City of Colorado Springs; KARA SKINNER, Chief Financial Officer for the City of Colorado Springs; MICHAEL SULLIVAN, Human Resource Director; and JOHN DOES 1-3

United States District Court Case Number 14-cv-01483-RM-MJW

CLAIM: Plaintiff claims color/national origin discrimination, hostile work environment and retaliation including termination working in the Finance department with the City of Colorado Springs.

STATUS: Summons and Complaint served June 30, 2014. Responsive pleadings for each defendant are due September 5, 2014. **Plaintiff filed an Amended Complaint October 20, 2014 and the Defendants' Responsive Pleading(s) are due December 3, 2014. Defendants have received Plaintiff's First Written Discovery with Responses Due November 26, 2014. The Discovery Cutoff is June 23, 2015.**

(Total 320.05 hours – Lessig/McCall/Smith)

#### PARKS, RECREATION, AND CULTURAL SERVICES

Elijah Boe, a minor, by and through his next of friend and parent Gabriel Boe v. City of Colorado Springs, CO

El Paso County District Court Case Number 2014CV030709

CLAIM: Plaintiff claims that the City knew or should have known of an alleged dangerous condition on playground equipment, which caused injury and damages. Plaintiff claims premise liability and attractive nuisance.

STATUS: March 7, 2014 Summons and Complaint served. March 28, 2014 Defendant files Answer and Affirmative Defenses. Discovery commences. **Settlement Conference scheduled for November 19, 2014. October 20, 2014 Motion for Summary Judgment filed by Defendant City of Colorado Springs. November 10, 2014 Plaintiff files response in opposition to Defendant's motion for summary judgment. November 20, 2014 A notice of settlement is filed with the Court and request to vacated trial.** Four day civil trial scheduled for January 26, 2015.

(Total 120.3 hours – White)

Daniel , Marilyn v. Defendant City of Colorado Springs

El Paso County District Ct. No. 2011CV2157;

Colorado Court of Appeals Case No. 2011CA1772;

Supreme Court Case No. 2012SC908

CLAIM: Plaintiff alleges that on October 7, 2009 she fell breaking her hip / femur as a result of catching her foot in hole at Valley Hi Golf Course parking lot. Claims are for premises liability and negligence.

STATUS: City filed a motion to dismiss based upon statutory immunity. Motion was denied by District Court and has been appealed to Court of Appeals. Case fully briefed and argued. Court of Appeals issued an opinion and notice remanding case back to District Court with directions to dismiss Plaintiff's complaint against the City.

Plaintiff filed Petition for Writ of Certiorari on December 3, 2012. City filed opposition brief to Petition for Writ of Certiorari on December 18, 2012. December 21, 2012 Court grants amicus brief filed by Colorado Trial Lawyers. January 7, 2012 Petitioner Marilyn Daniel files reply in support of Petition for Certiorari. April 29, 2013 The Petition for Writ of Certiorari is granted regarding whether a public golf course parking lot is a "public facility in any park or recreation area." Petitioner's Opening Brief is due June 11, 2013. June 4, 2013 Petitioner files Opening Brief; also a Motion for leave to file and Amicus Brief and the Amicus Brief is filed by the Colorado Trial Lawyers Association. June 21, 2013 Supreme Court accepted Colorado Trail Lawyers Amicus Brief. July 30, 2013 Respondent City files Answer Brief; Motion of Colorado Springs Municipal League for leave to participate as Amicus Curiae and to file Amicus Brief; filed along with Amicus Brief. August 19, 2013 Petitioner Marilyn Daniel files her Reply Brief. Oral Argument held October 29, 2013 at 10:30 a.m. May 19, 2014 Supreme Court reverses judgment en banc finding the parking lot a "public facility" and remands to the trial court for further fact finding. June 4, 2014 Supreme Court issues mandate. June 23, 2014 Colorado Court of Appeals issues mandate. **Settlement conference scheduled for November 18, 2014. 3 day Trial scheduled to begin March 16, 2015.**

(Total 622.3 hours – Lamphere)

## PLANNING

WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 2, AND WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 3, TITLE 32 METROPOLITAN DISTRICTS; AND KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. PRAIRIE VISTA, LLC, A COLORADO LIMITED LIABILITY COMPANY; ROCKY MOUNTAIN COMMUNITY LAND TRUST, A COLORADO NON-PROFIT CORPORATION; PIKES PEAK HABITAT FOR HUMANITY, INC., A COLORADO NONPROFIT CORPORATION; WILLIAM M. PECK; DARRELL H. OLIVER, SR.; KELLY ANN M. OLIVER; WILLIAM MARCHANT; MAUREEN M. MARCHANT; MARILYN J. HOWELL, AS TRUSTEE OF THE MARILYN J. HOWELL TRUST; C. ARLENE NANCE; SUSAN HANSON; THE CITY OF COLORADO SPRINGS, A COLORADO HOME RULE CITY AND MUNICIPAL CORPORATION; AND ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER OF THIS ACTION v. (THIRD PARTY PLAINTIFF) KF 103-CV, LLC, A COLORADO LIMITED LIABILITY COMPANY v. THIRD PARTY DEFENDANTS RS HOLDING COMPANY, LLC, F/K/A INFINITY HOLDING COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY; H2 LAND CO, LLC, A COLORADO LIMITED LIABILITY COMPANY; PAUL HOWARD; JONATHAN HOWARD; SCOTT HENTE; AND ROBERT ORMSTON  
El Paso County District Court Case NO. 08CV4553

**CLAIM:** This issue arose between the developers of a subdivision and property owners over the placement of a roadway. Initially, the City was added as a party to this matter as a party in interest. Later, Defendant Peck added City of Colorado Springs on a third amended counterclaim and third party complaint of Defendant William Peck. Peck's only claim against the City was an action for declaratory judgment that the City would approve any restoration plan ordered by the trial court.

**STATUS:** An Eight Day Trial Commenced October 23, 2012. November 26, 2012 Court issues order stating that City of Colorado Springs must approve court-approved partial restoration plan to Ski Lane and Sopressa Road. Court issues order judgment in favor of the Neighbors (Marchant, Howell, Nance, Hanson Oliver, and Peck) and that all other parties are jointly and severally liable to the Neighbors. December 10, 2012 Neighbors file Motion to Alter or Amend Findings, Conclusions and Judgment. Trial is scheduled for Plaintiff v. Third Party Defendant for January 24, 2013. Court grants stipulation for settlement as to KF 103-CV's Third Party Claims against the Infinity Parties on January 24, 2013. February 8, 2013 Court issues an order pending post-trial motions denying full restoration, that no party obstruct Ski Lane as an access easement, that Nance's motion to impose an order to replace or pay for removed dirt on parties other than RS Construction and Infinity Land is denied, that no recovery costs be passed along, denial of damage awards be reset, Court denies attorney fees, interest will accrue at 8% and in response to WHMD's motion for clarification the Court states that WHMD is jointly liable to partially restore Ski Lane and Sopressa and is not liable for damage awards to neighbors. City has no financial obligations. Parties file proposed orders for final judgment. October 30, 2013 Third Party Defendants file motions for reconsideration of October 15, 2013 Judgment and for order Nunc Pro Tunc concerning motion for clarification re October 15, 2013 Judgment and Motion for Reconsideration re Allocation of Liability of H2 Land Co., et al.; October 31, 2013 Defendants and William Peck file bill of costs. November 14, 2013 Plaintiff/Third-Party Plaintiff files notice of submission of completed construction plans pursuant to Court's order of October 15, 2013. November 15, 2013 KF 103-CV files response in opposition to motion for reconsideration re allocation of liability. November 20, 2013 Third-Party Defendants RS Construction, Hente, and Ormston file response to bill of costs. November 22, 2013 Third Party Defendants file reply in support of their motion for reconsideration re allocation of liability. November 27, 2013 Infinity Land Corp. files joinder in Third-Party Defendants' response to bill of costs; remaining responsible parties file response and objection to bill of costs. December 3, 2013 Status conference held. December 9, 2013 Defendants Marchants, Howell, and Nancy file combined reply to Defendants' bill of costs and response objecting to the Responsible Parties' proposed interim plans for constructing the Sopresa Lane wall and intersection. December 11, 2013 Court issues orders: 1) granting Hente, Howard, and Ormston's motion seeking clarification that they are not personally liable for judgments in the case and 2) denying Third Party Defendants' motion for order nunc pro tunc concerning motion for clarification re October 15, 2013 judgment and motion for reconsideration re allocation of liability; Third Party Plaintiffs file notice of dismissal of their claims against Third Party Defendants Mulliken & Mulliken, Weiner, Berg, & Jolivet, P.C. December 13, 2013 Plaintiff/Third-Party Plaintiff KF 103-CV files reply in support of its completed construction plans. December 17, 2013 Court issues order approving the construction plans. January 29, 2013 Defendants Marchant, Howell, Nance and Oliver file notice of appeal. June 27, 2013 Appellant files opening brief. July 17, 2014 Colorado Court of Appeals issues ordering show cause as to why the appeal should not be dismissed without prejudice for lack of a final,

appealable judgment. July 31, 2014 Plaintiff / Third Party Appellee and Cross Appellants' files response to Court's show cause order. August 7, 2014 Court orders parties to respond if negligent misrepresentation claims of Neighbors against KF 103-CV have been resolved and status of KF 103-CV's and Infinity entities have filed stipulation for dismissal with prejudice; all opening brief and answer brief deadlines are vacated until clarification and resolution of these issues. **August 28, 2014 Parties file response to Court's order for show cause. October 6, 2014 Court of Appeals remands issue back to trial court for a limited purpose of making additional findings.**

(Total 354.1 hours – White)

## POLICE

RONALD DWAYNE BROWN v. THE CITY OF COLORADO SPRINGS; PETER CAREY, Chief of Police, Colorado Springs Police Department, in his official capacity; VINCE NISKI, Deputy Chief of Police, Colorado Springs Police Department, individually and in his official capacity; ARTHUR "SKIP" ARMS, Commander, Colorado Springs Police Department, individually and in his official capacity; LT. SALVATORE FIORILLO III, Unit Commander, Tactical Enforcement Unit (Swat Team), Colorado Springs Police Department, individually and in his official capacity; SGT. RUSSELL (First Name Unknown), Colorado Springs Police Department, individually and in his official capacity; ; SGT. RONALD SHEPPARD, Colorado Springs Police Department, individually; ; SGT. CHRIS ARSENEAU, Colorado Springs Police Department, individually; ; OFFICER DAN CARTER, Colorado Springs Police Department, individually; OFFICER WILLIAM P. BETTS, Colorado Springs Police Department, individually; OFFICER ROBIN McPIKE, Colorado Springs Police Department, individually; OFFICER SHAWN MAHON, Colorado Springs Police Department, individually; OFFICER VANOONYEN (First Name Unknown), Colorado Springs Police Department, individually and in his official capacity;

United States District Court Case No. 14-cv-01471-RPM

CLAIM: Plaintiff makes multiple claims for relief including violation of 4<sup>th</sup> amendment for excessive force, failure to train or supervise, along with Section 1983 claims and common law claims of negligence, among others.

STATUS: June 3, 2014 Complaint and Summons served. August 5, 2014 City Defendants' file waiver of service of Summons. August 26, 2014 Plaintiff files Amended Complaint and terminates claims against numerous parties. **October 6, 2014 The City of Colorado Springs, Chief Peter Carey, Deputy Chief Vince Niski, Lieutenant Salvatore Fiorillo file partial motion to dismiss amended complaint. October 6, 2014 Sergeant Ronald Sheppard, Sergeant Chris Arseneau, Officer Dan Carter, Officer Willaim P. Betts, Officer Robin McPike, Officer Shawn Mahon, and Officer Marcus Van Oonyen file Answer and Affirmative Defenses and Jury Demand to Amended Complaint. October 27, 2014 Plaintiff responds to City's motion to dismiss. October 28, 2014 Court denies partial motion to dismiss amended complaint. November 12, 2014 Defendants file answer to first amended complaint. November 17, 2014 Plaintiff voluntarily dismisses Defendant Arthur "Skip" Arms.**

(Total 276.3 hours – Lamphere / White)

Lisa Cintron and City of Colorado Springs v. Megan DiMarco

El Paso County District Court Case No. 2013CV30890

CLAIM: Plaintiff Cintron filed Complaint on August 13, 2013 as a result of the tortuous conduct of Defendant. The City seeks to intervene in an effort to recover subrogation rights equal to workers' compensation benefits paid to the Plaintiff.

STATUS: City files Motion to Intervene and Plaintiff-Intervenor's Complaint on January 31, 2014. February 19, 2014 Court grants order for motion to intervene. March 7, 2014 Defendant files Offer of Settlement. March 12, 2014 Defendant files Answer to City's Complaint. Plaintiff motion to amend complaint and amended complaint is granted and deemed filed May 1, 2014. May 9, 2014 Defendant files Amended Answer. Three day jury trial set for October 27, 2014.

**October 16, 2014 Parties file joint stipulation for dismissal with prejudice.**

(Total 134.25 hours – Lamphere)

People of the State of Colorado v. Robert Crouse

Colorado Court of Appeals Case No. 2012 CA2298

Supreme Court Case No. 2014 SC 109

STATUS: City of Colorado Springs files a motion to either be an added party or in the alternative leave to file an amicus brief. City files amicus brief along with motion. July 26, 2013 Defendant files Answer Brief. August 29, 2013 People file Reply Brief. October 24, 2013 Appellant files notice of supplemental authority. November 20, 2013 Oral argument conducted. December 2, 2013 Parties file post-argument briefs as directed by Court. December 19, 2013 Court of Appeals issues order affirming judgment of trial court that marijuana and marijuana plants should be returned to Crouse. January 31, 2014 Petition of Writ of Certiorari filed by District Attorney on the issue of whether, in a matter of first impression, the court of appeals erred in concluding that the federal Controlled Substances Act does not preempt Article XVIII, section 14(2)(e) of the Colorado Constitution, where the state directive requires law enforcement officers to distribute marijuana to medical marijuana patients in violation of the CSA's prohibition of such acts. February 20, 2014 People file Reply brief.

(Total 86.8 hours – Lamphere)

Edmond, Michael Sean v. City of Colorado Springs, et al.

El Paso County District Court Case No. 2007CV332

Colorado Court of Appeals Case No. 2013CA002298

CLAIM: Plaintiff alleges that false statements were made by Defendant William Burrell for the search warrant issued by the Court on November 17, 1999, which caused Plaintiff's property to be seized and subsequently destroyed. Plaintiff claims violation of his 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendment rights and state law claims. Plaintiff also requests compensatory damages, punitive damages, and declaratory relief.

STATUS: Case remanded back to El Paso County District on March 15, 2012 with instruction to serve the parties. March 27, 2012 Summons, Notice of Appeal, and Mandate served on other parties. April 18, 2012 Court orders Defendants Terry Maketa, Sheriff of El Paso County and Brett Speiers to be added as party litigants. October 9, 2013 Complaint and Summons served on City only (not Defendant officers). October 22, 2013 City files motion to dismiss. October 30, 2013 Plaintiff files motion for leave to file amended complaint. November 15, 2013 Court issues order denying Plaintiff's motion for leave to file amended complaint. November 22, 2013 Plaintiff files motion to file response out of time and response to

City's motion to dismiss. December 6, 2013 City files reply to its motion to dismiss; Court issues order granting the City's motion to dismiss. December 18, 2013 Plaintiff files Notice of Appeal and designation of record and motion to waive appeal bond fees. December 19, 2013 Court denies Plaintiff's motion to waive appeal bond fees. December 24, 2013 City files motion for award of attorney fees. January 13, 2014 Plaintiff files request for hearing and objection to City's motion for award of attorney fees. January 14, 2014 Court grants City's motion for award of attorney fees. January 16, 2014 Court denies Plaintiff's request for a hearing on attorney fees as moot. February 4, 2014 Plaintiff files motion for stay pending appeal which judge denied on February 11, 2014. April 1, 2014 Plaintiff files Motion for Stay pending Appeal. April 8, 2014 Erik Lamphere files entry of appearance. Court denies Plaintiff-Appellant's motion to stay. **August 28, 2014 Court orders Plaintiff-Appellant to show cause why his appeal shouldn't be dismissed for failure to file an opening brief. October 30, 2014 Court dismisses case due to Plaintiff's lack of response to its order to show cause.**  
(Total 208.2 hours – Lamphere)

Guy, Kathryn v. Nathan Jorstad

United States District Court Case No. 12-CV-01249-RM-KMT

CLAIM: Plaintiff claims unnecessary use of excessive force resulting in death.

STATUS: May 15, 2012 Waiver of service of summons and Complaint received. July 9, 2012 Defendants file motion to dismiss. August 14, 2012 Defendants file motion for protective order from discovery and to vacate scheduling order deadlines, which motion is granted; discovery is stayed until the court rules on Defendants' motion to dismiss. November 2, 2012 Court allows Plaintiff to amend complaint; Amended complaint filed. November 16, 2012 Defendants file motion to dismiss Plaintiff's amended complaint. January 23, 2013 Plaintiff files response to City's motion to dismiss. February 6, 2013 Defendants file reply to their motion to dismiss. June 17, 2013 Parties file joint status report. January 27, 2014 Plaintiff filed motion for order to a finding of Section 15-11-803(7)(1). February 13, 2014 City Defendants file response to Plaintiff's motion for order to a finding of Section 15-11-803(7)(1). April 9, 2014 Court denies Petition pursuant to 15-11-803(7)(1). April 21, 2014 Court grants Defendants Motion to Dismiss; Plaintiff to proceed on claim against Defendant Jorstad in his individual capacity for the alleged violation of the Fourth Amendment; all other Defendants are dismissed. Scheduling conference set for June 3, 2014. May 5, 2014 Defendant Jorstad files Answer to Amended Complaint. **June 3, 2014 Scheduling conference held; scheduling order entered. September 23, 2014 Amended scheduling order entered.**

(Total 610.75 hours – Turner)

Hampton, Nathaniel v. Officer Evans, Officer Nelson, Officer Cherry, Detective Goodwin, City of Colorado Springs, and Other Unknown Police Officers

United States District Court Case No. 11-cv-01415-RM-CBS

CLAIM: Plaintiff, a pro se prisoner, alleges that on July 6, 2010, officers of the Colorado Springs Police Department conducted an unreasonable strip search and deprived him of his property without due process by auctioning his truck from impound while he was in jail.

STATUS: October 19, 2011 Summons and complaint received. Defendants file successive motions to dismiss. September 26, 2012 Court orders that Plaintiff may file an amended complaint containing claims based on the alleged strip search and a procedural due process claim against the City. December 7, 2012 Plaintiff files his 4<sup>th</sup> amended prisoner complaint. January

14, 2013 Defendants file motion to dismiss Plaintiff's 4<sup>th</sup> amended prisoner complaint. February 6, 2013 Plaintiff files response to Defendant's motion to dismiss 4<sup>th</sup> amended complaint. February 20, 2013 Defendant files reply in further support of its motion to dismiss. April 16, 2013 Magistrate Judge issues recommendation that City's motion to dismiss Plaintiff's Fourth Amended Complaint be granted and to dismiss claims one, three, and five and that the case proceed on claim two against Defendant Evans for violations based on strip search and claim Four against the City based on the notice provided to Mr. Hampton prior to the sale of his truck. May 1, 2013 Plaintiff files objections to the Magistrate Judge's recommendation. May 15, 2013 Defendants file response to Plaintiff's objections to the Magistrate Judge's recommendation. May 23, 2013 Parties file joint status report to the Court. May 28, 2013 Plaintiff files reply to Defendants' response to objections to magistrate's recommendations. (Total 402.8 hours – Turner)

Haskett, Phillip David v. Gary Woodrow Flanders, Colorado Springs Police Department Officer Dominick Luna, both personally and in his official capacity, and the Colorado Springs Police Department, a Department of the City of Colorado Springs, Colorado

United States District Court Case No. 13-CV-03392-RBJ-KLM

CLAIM: Plaintiff, who was involved in a civil matter with Defendant Flanders, claims that Officer Luna was negligent in his arrest of Plaintiff following a physical altercation with Mr. Flanders. Claims against City Defendants include malicious prosecution, respondeat superior, and RICO violations.

STATUS: January 9, 2013 Summons and Complaint received. January 29, 2014 City Defendants file motion to dismiss. March 4, 2014 Judge enters order striking Plaintiff's First Amended Complaint as Motion must be entered first. March 11, 2014 Plaintiff files motion for leave to file Amended Complaint. March 17, 2014 Plaintiff files first amended complaint after Court grants order on Plaintiff's motion for leave. Defendant Flanders files joinder in City Defendants motion to dismiss. All Defendants file Motions to Dismiss and have been responded and replied. August 4, 2014 Defendant Flanders files motion to dismiss first amended complaint. August 11, 2014 Plaintiff files response to Defendant Flanders' second motion to dismiss and motion to strike. August 19, 2014 Defendant files reply to second motion to dismiss and motion to strike. **September 5, 2014 Plaintiff files motion for leave to file a sur-reply to Defendant Flanders' reply in support of his combined second motion to dismiss and motion to strike. October 24, 2014 Magistrate recommends that Defendant Flanders motion to dismiss first amended complaint be denied.**

(Total 221.3 hours – Lamphere)

Mazin, David v. Jeffrey True, in his official and individual capacity; Kristin Genta, in her official and individual capacity; Erin Land, in her official and individual capacity; Henry Hasler, in his individual capacity; Noel Peterson, in his individual capacity; Barbara Brohl, in her official capacity; Laura Harris, in her official capacity; and City of Colorado Springs, Colorado

United States District Court Case Number 14-cv-00654 REB-CBS

CLAIM: Plaintiff brings unreasonable search and seizure and procedural due process claims against Defendants for destroying medical marijuana plants causing damages.

STATUS: March 18, 2014 Summons and Complaint served. April 2, 2014 Entry of Appearance filed by Anne Turner for City Defendants. Scheduling conference set for May 27, 2014 was converted to a motions hearing to hear the opposed motion for protective order filed by

Defendants on April 30, 2014. April 28, 2004 City Defendants file motion to dismiss. April 29, 2014 State Defendants file motion to dismiss. April 30, 2014 Defendant Land files motion to dismiss. June 6, 2014 Plaintiff files amended complaint and jury demand and state defendants file renewed motion to dismiss. June 20, 2014 Defendants Hasler, Peterson, Brohl and Harris motion to dismiss is withdrawn; Defendants True, Genta, City of Colorado Springs and Land motions to dismiss are denied as moot; all Defendants file new motions to dismiss amended complaint. July 21, 2014 Plaintiff files consolidated response to Defendants' motion to dismiss. August 4, 2014 all Defendants file reply briefs in support of motions to dismiss. (Total 196.85 hours – Turner)

Romens, Alan J. v. City of Colorado Springs

United States District Court Case No. 13-cv-01441-RM-KLM

CLAIM: Plaintiff brings 1983 action claiming violation of Equal Protection Clause of the Fourteenth Amendment to the United States Constitution stating that sworn marshal positions pay significantly more than his position as a civilian marshal position and require the same duties.

STATUS: September 3, 2013 Summons and Complaint received via mail with Waiver of Service. September 6, 2013 Waiver of Service signed by Christie McCall. September 9, 2013 City files unopposed motion to vacate and reschedule scheduling conference. September 10, 2013 Court grants motion to vacate and resets scheduling conference for November 18, 2013. November 4, 2013 City files motion to dismiss. November 25, 2013 Plaintiff files response to City's motion to dismiss. November 26, 2013 City files unopposed motion for protective order and to vacate scheduling order deadlines. December 3, 2013 Court issues order granting City's unopposed motion for protective order and to vacate scheduling order deadlines, staying all discovery. December 9, 2013 City files reply to its motion to dismiss.

(Total 178 hours – McCall)

Tomczyk, Teresa and City of Colorado Springs v. Richard H. Strong, Jr.

El Paso County District Court Case No. 2014CV30881

CLAIM: Plaintiff Tomczyk claims injuries and damages for a motor vehicle collision against Defendant Strong. The City moved to intervene to protect subrogation rights and for recovery of workers compensation benefits and property damage.

STATUS: April 4, 2014 City files motion to intervene and Plaintiff-Intervenor's Complaint. Defendant Strong files answer to Complaint and Jury Demand. May 13, 2014 Court grants City's motion to intervene. May 15, 2014 Defendant files answer to complaint in intervention. Three-day jury trial scheduled to begin February 9, 2015. **Mediation scheduled for December 11, 2014.**

(Total 139.7 hours – Lamphere)

American Family Mutual Insurance, Co. v. Mary C. Walsh, a.k.a. Mary C. Steckler and City of Colorado Springs

El Paso County Court Case No.

CLAIM: Plaintiff American Family Insurance files a simplified Complaint for damages incurred on Lindsay N. Smith's vehicle.

STATUS: June 23, 2014 Summons and Complaint served. **September 5, 2014 Plaintiff files motion for discovery order. November 6, 2014 Parties file stipulated motion to dismiss with prejudice which is granted by Court on same day.**

(Total 56.8 hours – Turner)

#### REAL ESTATE

Erindale Holdings, LLC, a Colorado limited liability company v. Erindale Place Townhome Association, a Colorado Non-Profit Corporation, aka Erindale Townhome Association, aka Erindale Place Homeowners Association, aka Erindale Place Homeowners Association, Inc., the City of Colorado Springs, a Home Rule Municipality

El Paso County District Court Case No. 2013CV30946

CLAIM: Plaintiff seeks declaratory relief that each of the Erindale Lots is entitled to easement over Common Areas within the Plat and seeks rights, status and legal relations between parties and award Plaintiff attorneys' fees from the HOA.

STATUS: February 2, 2014 Summons and Amended Complaint served. February 28, 2014 City files Answer, Affirmative Defenses and Jury Demand to First Amended Complaint. Four day trial scheduled for December 2, 2014. **September 23, 2014 Defendants Erindale Association files motion in limine regarding plaintiff's expert witness.**

(Total 159.15 hours – Lamphere)

HIGH ALTITUDE REAL ESTATE, LLC v. BRISCO BAGBY, DORIS L. BAGBY, CITY OF COLORADO SPRINGS, and all unknown persons who claim any interest in the subject matter of this action

El Paso County District Court Case Number 2014CV31626

CLAIM: Plaintiff brings claim to quiet title on 923 Boggs Place, Colorado Springs, CO 80910.

STATUS: Complaint and Summons served June 27, 2014. July 15, 2014 City files Disclaimer of Interest and request to be dismissed from matter.

(Total 13.5 hours – Gendill)

RHSC, LLC v. Bram Corporation, City of Colorado Springs, BC Services

El Paso County District Court Case Number 2014CV031008

CLAIM: Plaintiff obtained a judgment against the Debtor Bram Corporation in Case 11CV6350 and recorded the transcript of judgment. Defendant Bram Corp has failed to pay anything or pay off the judgment. The City of Colorado Springs may have an interest in the property due to a number of liens.

STATUS: March 27, 2014 Summons and Complaint served. April 17, 2014 City files Answer and Affirmative Defenses. August 7, 2014 Stipulation between Plaintiff and City is approved by Court. **September 10, 2014 Notice of Lis Pendens. October 1, 2014 City files Disclaimer and Stipulated motion to dismiss; Court grants order to dismiss.**

(Total 30.15 hours – Lamphere)

#### REGIONAL BUILDING DEPARTMENT

Probuild Company LLC and BMC West Corporation v. Heritage Homes, INC. d/b/a Today's Homes, INC. a/k/a Today's Homes; Spring Creek Construction, LLC a/d/b/a Springs Creek Construction, LLC; RBC Bank (USA) f/k/a RBC Centura Bank; American Builders Capital (US) INC.; Valiant Trust Company; Integrity Construction LLC; PTL Concrete INC.; Horizon Drywall INC.; Chiddix Brothers, INC.; D.H. Pace Company, INC. d/b/a Ankmar Door; Home Builders Services, INC.; Steel-T Heating, INC.; C&T Plumbing, LLC; Environmental Materials LLC d/b/a Environmental Stoneworks; Creative Touch Interiors, INC.; Positive Electric, LLC; METCO Landscape, INC.; City of Colorado Springs; Safety Rails of Colorado INC.; Builder Services Group, INC. d/b/a Allied Insulation Division 176; The Sherwin-Williams Company; Advanced Ready Mix INC.; Barton Materials, LLC d/b/a Barton Supply; Split Rail Fence CO; Continental Woodworks, Inc.; Sidney C. Shipp; Public Trustee of El Paso County

El Paso County District Court Case Number 2012CV4089

CLAIM: Plaintiffs filed a mechanic's lien foreclosure based on their furnishing of materials, supplies, and goods for use in or on fourteen properties owned by Heritage Homes, for which they allege payment has not been received. Plaintiffs also allege breach of contract, breach of implied contract, open account, and unjust enrichment. The remaining Defendants, including the City, may have interests in the real properties against which the Plaintiffs seek to foreclose their lien. The City's interest has been identified as extending only to a claim that the properties at issue do not comply with City Code, and this interest has been asserted in the case.

STATUS: December 6, 2012 Summons and Complaint was filed with the City. December 27, 2012 City files answer to Plaintiff's complaint. April 3, 2013 Court grants Plaintiff unopposed and stipulated motion to transfer mechanic's lien action to Division 19 and stay mechanic's lien foreclosure action.

(Total 29.6 hours – Gendill)

## STREETS

United Parcel Service v. Skyway Condominium Association, Inc., and The City of Colorado Springs

El Paso County District Court Case Number 2014CV031122

CLAIM: Plaintiff is making subrogation claims against the Defendants for moneys paid out on a sidewalk slip and fall case.

STATUS: April 24, 2014 Summons and Complaint served. May 15, 2014 The City files Answer, Affirmative Defenses and Jury Demand. May 31, 2014 Defendant Skyway Condominium Association files Answer. **September 2, 2014 Court issues Delay Prevention Order directing Plaintiff to set matter for trial. September 10, 2014 Jury trial scheduled for April 20-24, 2015.**

(Total 68.3 hours – Turner)

## TRANSIT SERVICES

Amalgamated Transit Union, Local 19 v. First Transit, Inc., v. City of Colorado Springs

El Paso County Court Case No. 2007CV1322, appealed to the Colorado Court of Appeals, Case No. 09CA2343;

United States District Court Case No. 10-cv-02002-RPM-MEH;

Case remanded to Denver District Court Case No. 2010CV6127;

Case changed venue to El Paso County Court Case No. 2012CV81

Court of Appeal, Case Number 2013CA001711

**CLAIM:** Defendant and Third-Party Plaintiff First Transit filed this third-party complaint against the City to enforce the City's alleged contractual obligation to indemnify First Transit for any liability and costs arising from the claim of Plaintiff Amalgamated Transit Union (ATU) Local 19. In 1981, the City, ATU, and the contract operators for the City's transit operations entered into a Section 13© Agreement. In 2006, Laidlaw Transit was awarded the contract to operate the City's general fund transit operations, commonly called the "South Facility." In 2007, the assets of Laidlaw were purchased and merged into First Transit, which assumed Laidlaw's contract with the City. In November, 2009, the City notified First Transit of the termination of the South Services Contract due to funding shortfalls and First Transit was ordered to plan the cessation of the South Facility operation accordingly. First Transit then ceased operating the South Facility and terminated all South Facility employees.

**STATUS:** In January, 2010, ATU asserted to First Transit that First Transit is a party to the Section 13© Agreement and is required by the Agreement to apply the South Facility collective bargaining agreement to the Pikes Peak Rural Transportation Authority bus transit operation (referred to as the "North Facility") and all North Facility collective bargaining unit employees or to provide dismissal allowances, thereby burdening First Transit with potential liability. ATU filed suit against First Transit in Colorado State District Court for Denver County, Colorado on July 30, 2010. On August 19, 2010, First Transit filed a Notice of Removal in the U.S. District Court, District of Colorado. On September 13, 2010, First Transit filed a third-party complaint against the City seeking indemnification pursuant to the parties' services agreement and alleging that the City is contractually obligated to assume sole responsibility, indemnify, and compensate First Transit for any and all costs and liability resulting from ATU's claims raised pursuant to the 13© Agreement. On November 1, 2010, the City filed a motion to remand to El Paso County District Court. First Transit filed its response to the City's motion to remand on November 23, 2010, and the City replied on December 7, 2010. A hearing on the City's motion to remand was held on January 7, 2011. On February 14, 2012, the Court issued an order granting the City's motion to remand, but remanding the case to the District Court for the City and County of Denver, Colorado. On February 28, 2012, the City filed a motion to dismiss for failure to state a claim for which relief can be granted, C.R.C.P. 12(b)(5) in the District Court for the City and County of Denver, Colorado. On that same date, the District Court for the City and County of Denver, Colorado *sua sponte* issued an order remanding the case to the El Paso County District Court (thereby initiating Case No. 12cv81). On March 1, 2012 ATU filed a motion to reconsider Court's order of February 28, 2012. The City reaffirmed its motion to dismiss by re-filing same in 12cv81. The city responded to ATU's motion to reconsider on March 14, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue. And, on March 19, 2012, ATU filed response to the City's motion to dismiss. On March 20, 2012, First Transit filed a response in opposition to ATU's motion to reconsider the Denver District Court's remand to El Paso County; and, on March 20, 2012 First Transit also responded in support of the City motion to dismiss. ATU replied on March 21, 2012 in support of its motion reconsider the Denver District Court's order remanding to El Paso County. The City then, on March 26, 2012, responded to ATU's motion to hold the proceedings in abeyance. On March 27, 2012 ATU replied to First Transit's response in support of City's motion to dismiss; and ATU replied to First Transit's response regarding the order concerning remand to El Paso County. On March 30, 2012, the City files replied to ATU in support of the City's motion to dismiss. On April 2, 2012, ATU replied in support of its motion

to hold proceedings in abeyance. A motions hearing was held on June 21, 2012. On July 6, 2012, the El Paso County District Court (12cv81) issued an order stating it would take no action regarding the City's motion to dismiss until the a judgment was entered in 2007cv1322.

2007cv1322 has been filed by ATU against the City in El Paso County District Court regarding enforcement of the 13(c) agreement against the City and its contractors. In that case, the El Paso County District Court has entered an order on August 25, 2009 entitled Partial Grant and Denial of City's Motion for Summary Judgment, finding the binding interest arbitration provisions of paragraph 15 of the 13(c) agreement in violation of Colorado law and unconstitutional. ATU appealed that ruling to the Colorado Court of Appeals (09CA2343). On October 21, 2010, the Court of Appeals announced an unpublished opinion affirming the judgment and remanding the case with directions. A trial on remand was held June 11, 2012. On July 24, 2012, the Court in 07cv1322 entered an order finding that the 13© agreement was not perpetual and void as a matter of law. 07cv1322 is now closed.

ATU filed a notice of decision on August 28, 2012, notifying the El Paso County District Court in 12cv81 that the Court had ruled in 07cv1322. October 12, 2012 the Court issues order denying City's motion to dismiss in 12cv81. The City on November 8, 2012, filed its answer and affirmative defenses to First Transit's third party complaint. The parties exchanged disclosures on December 18, 2012. Trial is scheduled for September 16, 18 and 19, 2013. The parties have responded to written discovery in advance of the May 31, 2013 discovery cut-off date and dispositive motion deadline of June 17, 2013. May 24, 2013 Court grants stipulation to stay proceedings regarding third party claims. June 17, 2013 First Transit files motion for summary judgment. July 8, 2013 Defendant First Transit files response in opposition to Plaintiff's motion for summary judgment; Plaintiff files brief in opposition to First Transit's motion for summary judgment. July 17, 2013 Plaintiff files amended reply brief in support of its motion for summary judgment. July 24, 2013 Court grants Plaintiff's motion for summary judgment and thus agrees to proceed to arbitration; Court denies First Transit's motion for summary judgment. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b). August 29, 2013 Court grants order for final judgment pursuant to 54 (b). City's liability determination is stayed. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief. December 3, 2013 First Transit files amended opening brief. January 21, 2014 First Transit responds to Court's Show Cause Order. February 28, 2014 Court files order of dismissal as Court determines it lacks jurisdiction over appeal for lack of final appealable judgment. April 11, 2014 First transit petitions for writ of certiorari from the order of dismissal. April 25, 2014 ATU files Brief in opposition to petition for certiorari. May 2, 2014 First Transit files reply brief in support of petition for writ of certiorari. **August 25, 2014 First Transit files motion to lift stay on proceedings re third party claims. August 26, 2014 Amalgamated files objection to First Transit's motion to lift stay. September 10, 2014 First Transit files consolidated reply in support of its motion to lift the stay on proceedings in the third-party claim and response to Plaintiff's ATU's motion to condition the order lifting the stay of the third-party claim. Court denied First Transit's motion to lift the stay.**

(Total 500.65 hours –Gendill)

(OC)

Mohamad, Nancy C. v. McDonald Transit Associates, Inc. and the City of Colorado Springs  
El Pas County District Court Case No. 13CV30621

CLAIM: Plaintiff alleges that due to negligence, unlawfulness and carelessness of a bus driver, Plaintiff fell causing injuries and damages.

STATUS: Complaint filed July 24, 2013. August 30, 2013 Defendant McDonald files answer. October 7, 2013 City files answer. Discovery ongoing. Four-day trial reset to begin Monday, January 26, 2015.

(Total – 3 hours / E. Kennedy at Hall & Evans, LLC)

## UTILITIES

(OC)

CASCADE PUBLIC SERVICE COMPANY, INC., A COLORADO CORPORATION, AND  
CASCADE METROPOLITAN DISTRICT NO. 1, A COLORADO SPECIAL DISTRICT AND  
MUNICIPAL CORPORATION

Pueblo County District Court Water Division No. 2 Case No. 2011CW42

CLAIM: Plaintiffs, Cascade Public Service Company and Cascade Metropolitan District No. 1 allege that the Plaintiffs and the City entered into an agreement as to water rights in 1990. Plaintiffs allege that the City, by its failure to divert, use, and account for use of Plaintiffs' water rights for a period in excess of 20 years has diminished and/or terminated a portion of Plaintiffs' water rights by reducing their historic consumptive use quantification and that this diminishment constitutes a breach of the 1990 agreement. Plaintiffs were granted leave to amend their complaint to add a new claim for relief that the City had breached the 1990 Agreement by its alleged failure to keep accurate records and accounts of water service and to correct within a reasonable time errors in billing. Plaintiffs seek declaratory judgment by the Court that the City did breach the 1990 Agreement with the result that the Bypass Flow Obligation is in full force and effect.

STATUS: June 24, 2011 – summons and complaint received. July 21, 2011 – City files its answer. In June 2012, Plaintiffs were granted leave to amend their complaint to add a new claim for relief that the City had breached the 1990 Agreement by its alleged failure to keep accurate records and accounts of water service and to correct within a reasonable time errors in billing. The City filed its answer to the amended complaint on July 11, 2012 and asserted a breach of contract counterclaim against the Plaintiffs for their failure to pay for water service within the time required by the 1990 Agreement. Trial was originally scheduled for April 2013. In February 2013, Plaintiffs hired additional legal counsel and due to the schedule of the new counsel, the April 2013 trial date was vacated and reset for August 13-16, 2013. The parties subsequently entered into settlement discussions and in late April, agreed to hold in abeyance all further trial preparation while settlement negotiations proceeded. Plaintiffs filed a motion to vacate the trial to allow settlement negotiations to proceed. The parties discussed settlement on a number of occasions, but they were unable to reach a settlement. Trial was then scheduled for February 11-14, 2014. In November 2012, Cascade Public Service Company gave a deed in lieu of foreclosure to Realty Management Group, LLC (RMG) conveying the Harmes Ditch Water Rights that are the subject of the 1990 Agreement. On October 31, 2013, RMG moved to intervene in the case as a Plaintiff on the grounds that it owns the Harmes Ditch Water rights. The City consented to intervention on the grounds that RMG now owned the water rights and the court granted the motion to intervene. Plaintiffs filed a motion to continue trial on the grounds that one of Plaintiffs' key witnesses was under criminal investigation for embezzlement from the Cascade Metropolitan District and was not available for deposition or trial until after the criminal charges were resolved. The City opposed the motion due to prejudice to the City arising from

delay and continued non-payment for water services by the Plaintiffs. The City and Plaintiffs thereafter entered into an agreement to continue the trial pursuant to which the Cascade Metropolitan District will add a monthly fee to its current water bills and use the money from the added fee to pay off its past-due balance. In addition, Plaintiffs agreed to pay in full each monthly bill plus all accrued interest. If Plaintiffs fail to adhere to this agreement, then trial could be reset without regard to the status of Plaintiffs' unavailable witness. The parties are required to file status reports with the court on the availability of the currently unavailable witness in June 2014 and every 91 days thereafter. Trial will be rescheduled as soon as the unavailable witness can testify, but when the witness will be available is still unknown due to investigations still underway by the El Paso County District Attorney's office. There are several other motions pending before the court seeking rulings on various matters. The parties have met on several occasions to discuss settlement and those discussions are continuing. A status conference was held with the court on July 7, 2014. At that time the court ordered the parties to enter into mediation. The parties agreed to use retired water judge O. John Kuenhold as the mediator. **Subsequent to the court's order for mediation, a group of customers of the Cascade metropolitan District moved to intervene in the lawsuit. The customers of the Cascade metropolitan District are located outside of the District's boundaries and therefore have no vote on the District's Board of Directors. They think the District has been badly managed and feared any settlement would occur to their detriment. Because their interests were not represented by any party to the lawsuit, they appeared entitled to intervene, so the City consented to their intervention, as did the Plaintiffs. The Intervenors were included in the court ordered mediation. The first mediation session was held on October 30, 2014. The parties made progress in refining the issues to be resolved and terms for consideration as part of the settlement. The next mediation session is set for November 13, 2014, at which time the parties hope to reach an agreement in principle on the terms of a settlement. All of the other parties are aware that any settlement will require review and approval by the City Council in order to be effective.**

(William Paddock at Carlson, Hammond & Paddock)

(CC)

City of Colorado Springs, Colorado v. Lorson, LLC, a Colorado Limited Liability Company, as nominee for Murray Fountain, LLC, a Colorado Limited Liability Company. And as nominee for Lorson Conservation Investment 2, LLLP, a Colorado limited liability limited partnership; Widefield Water and Sanitation District, a quasi-municipal corporation of the State of Colorado; and Robert C. Balink, El Paso County Treasurer

El Paso County Combined Court Case No. 2013CV032113.

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Southern Delivery System. The City requests that the Court determine the compensation to be paid Respondents for the interests in the subject property and that the City have judgment condemning the property upon compensation by the City to the Respondents.

STATUS: December 6, 2013 City files Petition in Condemnation. December 9, 2013 City files motion for immediate possession. December 10, 2013 City files Notice of Commencement of Action – Lis Pendens. December 31, 2013 Defendant Balink files disclaimer of interest. February 4, 2014 Order for Immediate Possession granted. Status report due July 16, 2014. **September 11, 2014 Parties propose commissioners. October 9, 2014 Court appoints commissioners.**

(Total 79.9 hours – Turner/Blieszner/Banner)

(CC)

CITY OF COLORADO SPRINGS, CO v. ULTRA RESOURCES, INC, a Wyoming Corporation and ROBERT C. BALINK, El Paso County Treasurer.

El Paso County District Court Case No. 2013CV743

CLAIM: The City filed this action in order to acquire land in fee simple and a certain right-of-way in the form of permanent and temporary construction easements by eminent domain for the completion of the Southern Delivery System. The City requests that the Court determine the compensation to be paid Respondents for the interests in the subject property and that the City have judgment condemning the property upon compensation by the City to the Respondents.

STATUS: January 23, 2013 Petition in Condemnation and Motion for Immediate Possession. January 24, 2013 Notice of Lis Pendens recorded with the El Paso County Clerk & Recorder. March 8, 2013 Ultra Resources files response in opposition to motion for immediate possession. March 13, 2013 Petitioner files brief in support of motion for immediate possession. March 19-20, 2013 Immediate possession hearing held. March 20, 2013 Court grants order for immediate possession. August 28, 2013 Motion for leave to file amended petition. September 23, 2013 Court grants leave to file amended petition. Status Conference held October 28, 2013; Order issued granting second motion for immediate possession. December 9, 2013 Parties file partial joint nomination of commissioners, nominating two commissioners (Steve Pelican and Edwards Shields, and request for additional time to complete nomination). December 13, 2013 Parties file joint nomination of final commissioner (Kirk Samelson). December 16, 2013 Court issues order granting the nomination of the commissioners. Four day trial to commission set for February 9, 2015. Mediation scheduled for August 28, 2014.

(Total 107.95 hours – Turner / Blieszner)

(CC)

CITY OF COLORADO SPRINGS, COLORADO v. WALKER RANCHES, LLP, A COLORADO LIMITED LIABILITY LIMITED PARTNERSHIP; AND DEL OLIVAS, PUEBLO COUNTY TREASURER

Pueblo County Combined Court Case No. 2011CV313.

**Colorado Supreme Court Case No. 2014SA319**

CLAIM: The City filed this action in order to acquire a certain right-of-way in the form of a permanent easement and a temporary construction easement by eminent domain for the completion of the Southern Delivery System. The City requests that the Court determine the compensation to be paid Respondents for the interests in the subject property and that the City have judgment condemning the property upon compensation by the City to the Respondents.

STATUS: May 11, 2011 City files Petition in Condemnation. May 26, 2011 Pueblo County Treasurer files answer to petition in condemnation and notice of claim for prorated property taxes for the current taxable year on property. May 31, 2011 Walker Ranches files answer to petition in condemnation and jury demand and response to motion for immediate possession. October 11, 2011 Parties file stipulation for immediate possession. October 11, 2011 Court issues order granting immediate possession; City to deposit \$76,046.00 into court registry; Cattle Relocation Agreement previously entered into between the City and Walker Ranches incorporated into this agreement; Walker Ranches will have 90 days from date of deposit of funds into court registry to obtain appraisal at City's expense. October 18, 2011 City

files notice of deposit of funds in court registry. November 29, 2011 Walker Ranches files motion for forthwith disbursement of funds on deposit in the District Court Registry. November 30, 2011 Court issues order granting motion for forthwith disbursement of funds on deposit in the District Court Registry. December 9, 2011 Defendant Olivas files disclaimer of interest. February 8, 2012 Petitioner files unopposed motion for leave to file amended petition. February 9, 2012 Court grants Petitioner's motion for leave to file amended petition. June 4, 2012 Court issues Pre-Trial Order outlining deadlines prior to trial. Four-day jury trial rescheduled from May 14, 2013 to February 18, 2014. October 10, 2013 Parties file Proposed Stipulated Modified Case Management Order. October 21, 2013 Court grants Parties' Stipulated Amended Modified Case Management Order. October 24, 2013 Order granting Petitioner's motion for leave to file second amended petition in condemnation. October 30, 2013 Parties file stipulation for immediate possession. Discovery has commenced. November 4, 2013 Order granting immediate possession. November 18, 2013 City files motion to reschedule trial and enlarge time to file rebuttal expert reports. November 21, 2013 Respondent files motion for forthwith disbursement of additional funds on deposit in the District Court Registry and response to the City's motion to reschedule the trial and enlarge time to file rebuttal expert reports. November 27, 2013 City files reply to its motion to reschedule trial and enlarge time to file rebuttal expert reports. December 10, 2013 Court issues order granting City's motion to reschedule trial and enlarge time to file rebuttal expert reports. December 16, 2013 Court issues order granting motion for forthwith disbursement of additional funds on deposit in the District Court registry. April 16, 2014 Petitioner files motion to compel disclosure of respondent's financial information relating to ranching operations. Hearing scheduled for June 18, 2014. **August 26, 2014 Walker Ranches files motion in limine to exclude expert opinions based on assumptions now known to be false. August 28, 2014 Petitioner files motion to reschedule trial and request for expedited disposition. September 2, 2014 Court denies Walker Ranches motion in limine; Court also denies the motion to reschedule trial. September 9, 2014 Petitioner files motion for jury view of the property. Numerous depositions scheduled. September 15, 2014 Petitioner files several motions in limine. October 11, 2014 Confidentiality Agreement and Protective Order approved by Court. October 12, 2014 Court denies and rules on Petitioner's motions in limine. October 15, 2014 Petitioner files Petition for Rule to Show Cause with Supreme Court; Petitioner files Status Report regarding document production to District Court. October 16, 2014 Court orders that Walker Ranches respond in 7 days as the Court feels there is no practical way to produce material before trial. Mediation scheduled for September 29, 2014. Trial scheduled for November 4, 2014 was vacated on October 19, 2014 by Court; a new trial is to be set on November 4, 2014. October 23, 2014 Colorado Supreme Court denies Petition for Rule to Show Cause. Two-week jury trial scheduled to begin April 13, 2015. Hearing on pending discovery matters scheduled for January 16, 2015. Pre-trial readiness conference scheduled for March 23, 2015.**

(Total 271.7 hours – Turner/Blieszner/Banner/Robbins)

Cusack, Mark E. v. Daniela Francis Cusack a/k/a Daniela F. Cusack; The City of Colorado Springs, a municipal corporation; and all unknown persons who may claim any interest in the subject matter of this action

El Paso County District Court Case No. 2013CV32158.

CLAIM: Plaintiff seeks declaratory judgment in this matter and a determination of adverse possession, alleging that he is entitled to a decree vesting title in the subject property to him.

Plaintiff also seeks as declaratory judgment that a Warranty Deed conveying an interest in the property to the City in 1973 was for an easement only and not for a fee interest, as claimed by the City.

STATUS: December 18, 2013 Summons and Complaint received. January 8, 2014 City files answer and counterclaim, asking the Court to deny Plaintiff's claims, declare that the City owns the tract of land that is the subject matter of this matter, that no other person has an enforceable interest in the subject property, and enter judgment to the subject property in favor of the City. The City seeks a declaration that, via the Warranty Deed, the City received fee simple title to the subject property for the purpose of maintaining water transmission lines and incidental uses, including maintaining roads. January 20, 2014 Plaintiff files reply to City's counterclaim and notice of lis pendens recorded December 10, 2013. February 3, 2014 Plaintiff files reply to Defendant Daniela Cusack's counterclaim. Defendant Daniela Cusack filed answer and counterclaim against Plaintiff Mark Cusack. Discovery commences. Five day jury trial scheduled for May 11, 2015. Mediation is scheduled for August 29, 2014. **Parties have reached a tentative agreement. Settlement documents are not final at this time.**

(Total 174.55 hours – Gendill)

Gumaer Placer, LLC, a Colorado limited liability company v. City of Colorado Springs, a Colorado municipality

Park County District Court Case No. 2014CV30019

CLAIM: Plaintiff brings a declaratory judgment action based upon a right of way agreement of 1955 for the City's alleged refusal to move a raw water underground pipeline to allow for future mining operations in Alma, CO.

STATUS: Waiver and Complaint received March 11, 2014. March 19, 2014 Waiver and Acceptance of Service. April 9, 2014 City files Motion to Dismiss. April 28, 2014 Plaintiff files response to City's motion to dismiss. May 5, 2014 Defendant files reply in further support of Motion to Dismiss. May 7, 2014 Court grants motion to dismiss, but allows Plaintiff to file amended complaint within 30 days. June 4, 2014 Plaintiff files amended complaint for declaratory judgment. June 18, 2014 City files motion to dismiss. July 23, 2014 Plaintiff files response to second motion to dismiss. August 12, 2014 City files reply brief in further support of Defendant's motion to dismiss amended complaint. **October 7, 2014 Court denies motion to dismiss amended complaint and orders that the parties engage in mediation. November 3, 2014 City files Answer to Amended Complaint.**

(Total 122.6 hours – Turner)

IN THE MATTER OF THE APPLICATION AND REQUEST OF THE CITY OF COLORADO SPRINGS FOR AUTHORITY TO ESTABLISH A NEW PUBLIC CROSSING AND IMPROVED APPROACH AT THE CROSSING OF THE EXISTING TRACKS LOCATED NEAR THE INTERSECTION OF LOREN LANE AND INTERSTATE 25, IN EL PASO COUNTY, COLORADO

Public Utilities Commission of the State of Colorado Docket No. 13A-1104R

APPLICATION: The City applies to the Public Utilities Commission for authorization to establish a new public railway crossing and improve approach at the intersection of Loren Lane and railroad tracks.

STATUS: October 21, 2013 City files notice of application and petition. October 29, 2013 PUC issues a 30-day notice to interested parties to file Notice of Intervention. November 26,

2013 BNSF Railway Company files entry of appearance and notice of intervention. December 11, 2013 Public Utilities Commission issues decision deeming application complete and granting application, subject to completion of a construction and maintenance agreement between Utilities and BNSF Railway Company.  
(Total \_\_ hours – Burgess).

Janet Johnston and Mary Clay (Johnston-Clay) v. The City of Colorado Springs

United States District Court Case No. 13-cv-03472

CLAIM: Plaintiffs Janet Johnston (prior Sales and Load Forecasting Supervisor), and Mary Clay (current Analyst Lead) in the Energy Services Department of Colorado Springs Utilities, allege discrimination based on age and gender, retaliation for engaging in protected activity, and hostile work environment. Janet Johnston also alleges discrimination due to disability, and Mary Clay alleges discrimination due to race. Plaintiffs allege that they were denied promotions, subjected to demotions, and that CSU has a pattern and practice of promoting male employees under age 40 in management positions. Plaintiffs seek damages.

STATUS: Plaintiffs filed an Amended Complaint on March 18, 2014, and a Second Amended Complaint on March 21, 2014. The City filed a Partial Motion to Dismiss on April 4, 2014; Plaintiffs filed their response April 24, 2014; and the City filed its reply on May 8, 2014. The City filed Motions to Stay Discovery Pending the Motion to Dismiss and for Separate Trials; Plaintiffs filed responses to each motion on April 28, 2014, and the City filed its replies on May 9, 2014. Discovery commences. Rulings on the Defendant’s Motions to Dismiss and for Separate Trials are still pending. **The discovery cutoff is January 2, 2015. The Magistrate recommended granting Defendant’s Partial Motion to Dismiss – dismissing all claims at issue in the motion; still pending the District Court Judge’s final ruling. The Court has not yet ruled on the Motion for Separate Trials. The Dispositive Motion deadline is January 30, 2015 and a Jury Trial is currently set for February 23, 2015.**

(Total 1468.3 hours – Lessig/McCall/Smith)

(OC)

NEW YORK STATE ET AL. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND STEPHEN L. JOHNSON, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, United States District Court, Southern District of New York, Case Nos. 08-cv-5606 and 08-cv-8430 – challenges to EPA’s Water Transfers Rule filed in US District Court at the same time as challenges were filed in multiple courts of appeal (see above). November 14, 2012, after Eleventh Circuit Court of Appeals rules it does not have jurisdiction over the challenges to the Rule, Judge extends stay to December 17, 2012 without prejudice to intervention and sets briefing schedule. December 6, 2012, Western Urban Water Coalition *et al.* (including the City of Colorado Springs acting by and through Colorado Springs Utilities) “Western Providers”), files pre-motion letter requesting conference on intervention as defendants. Colorado/New Mexico *et al.*, Friends of the Everglades, Miccosukee Tribe, South Florida Water Management District file similar letters on intervention by end of December. December 27 Judge extends stay and sets pre-motion conference. January 30, 2013, Judge holds pre-motion conference on intervention in White Plains, New York; intervention granted to all by consent at conclusion of conference. Per Judge’s briefing schedule: Motion(s) to dismiss by EPA and Defendant-Intervenor South Florida Water Management District, and Plaintiffs’ motions for summary

judgment filed March 22, 2013; EPA and Defendant-Intervenors responses and cross-motions for summary judgment filed June 7, 2013; Plaintiff's responses/replies filed July 7, 2013; EPA and Defendant-Intervenors replies filed August 2, 2013. December 19, 2013 oral argument on cross motions for summary judgment scheduled held in White Plains, NY. March 28, 2014 Judge grants Plaintiffs' and Intervenor- Plaintiffs' Motions for Summary Judgment, denies Defendants' and Intervenor- Defendants' Motions and Cross-motions for Summary Judgment, vacates the Water Transfers Rule to the extent it is inconsistent with the statute and in particular the phrase "navigable waters" as interpreted in Rapanos and in the Opinion, and remands the Water Transfers Rule to the extent EPA did not provide a reasoned explanation for its interpretation. May 30, 2014, Western Providers, Western States, EPA and other inventor-defendants file notices of appeal. **September 9-15, 2014 Western Providers and other appellants file opening briefs. December 24, 2014, deadline (request pending) for appellees to file responsive briefs. January 26, 2015, deadline (request pending) for appellants to file replies.**

(Peter D. Nichols)

ONRC ACTION v. BUREAU OF RECLAMATION (BOR), COMMISSIONER OF THE BOR; KLAMATH BASIN WATER USERS ASSN.; OREGON WATER RESOURCES CONGRESS; KLAMATH DRAINAGE DISTRICT

United States Court of Appeals for the Ninth Circuit, on appeal from United States District Court for the District of Oregon, Appeal No. 12-35831

CLAIM: Citizen lawsuit against Reclamation for water transfers through Klamath Straights without an NPDES permit.

STATUS: October 12, 2012, ONRC Action appeals the District of Oregon's Order of August 14, 2012, adopting the Magistrate's Report and Recommendation granting defendant's motion for summary judgment and dismissing ONRC's lawsuit. May 8, 2014, briefing on appeal complete. Amicus curiae briefs filed by the Hoopa Valley Tribe the Miccosukee Tribe of Indians of Florida, Friends of the Everglades, and Florida Wildlife Federation, and by the States of New York et al. ("Eastern States") in support of ONRC. Western Urban Water Coalition, National Water Resources Association et al. (including the City of Colorado Springs acting by and through Colorado Springs Utilities) ("Western Providers"), the States of Colorado/New Mexico et al. ("Western States"), the State of California by and through The California Department of Water Resources, and Westlands Water District and San Luis & Delta-Mendota Water Authority file amicus curiae briefs in support of Reclamation. **November 21, 2014, oral argument scheduled for Portland, Oregon.**

(Peter D. Nichols)

## WORKERS' COMPENSATION

Harpstrite, Anthony v. James Adler

El Paso County Case Number 2014CV030855

CLAIM: Plaintiff Harpstrite filed Complaint on March 17, 2014 as a result of the tortuous conduct of Defendant. The City seeks to intervene in an effort to recover subrogation rights equal to workers' compensation benefits paid to the Plaintiff.

STATUS: July 23, 2014 City files Motion to Intervene and Plaintiff-Intervenor Complaint. August 5, 2014 Plaintiff's file motion to add claim for exemplary damages and request for

discovery. August 8, 2014 Court grants motion to intervene. August 21, 2014 Defendant Elder files response to Plaintiff's motion to amend complaint. **August 28, 2014 Plaintiff files reply to its motion to amend complaint. August 29, 2014 Court grants Plaintiff's motion to add claim for exemplary damages and request for discovery. September 3, 2014 Plaintiff files first amended complaint. September 9, 2014 Defendant Elder files answer and jury demand to Plaintiff's first amended complaint.**

(Total 68.3 hours – Lamphere)

## ADMINISTRATIVE SECTION

### DISPOSED MATTERS

#### NEW MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2014-02154. Claimant brings charge of alleged age discrimination on September 26, 2014. Position Statement/RFI due November 24, 2014.

(Total 7 hours – J. Smith)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2014-02239. Claimant brings charge of alleged age discrimination on October 10, 2014. Position Statement/RFI due November 21, 2014.

(Total 5.3 hours – Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number 541-2015-00306.

Claimant brings a continuing action claim of discrimination based on retaliation and sex on October 31, 2014. Position Statement / RFI due December 15, 2014.

(Total \_\_ hours – Lessig)

### CURRENT MATTERS

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number E20140514. Charge of alleged discrimination is filed April 17, 2014. Position Statement/RFI filed May 23, 2014. On July 29, 2014 the CCRD issued a Notice of Early Right to Sue, indicating that the CCRD likely would not finish their investigation in 180 days, and the Claimant made a request for the Notice of Right to Sue prior to the expiration of 180 days following the filing of the charge. Deadline to file lawsuit is October 30, 2014. **No lawsuit was filed regarding the CCRD charge; however an additional Notice of Right to Sue was issued by the EEOC on 10/29/14 – the deadline to file a lawsuit under this Notice is January 30, 2014.**

(Total 130.15 hours – McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-01062. Charging Party alleges discrimination on the basis of the Americans with Disabilities Act. **Position statement initially due September 11, 2014; however the City's response is stayed pending mediation scheduled for December 16, 2014.**

(Total 14.3 hours – Lessig)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-01161. *See EEOC Charge No. 541-2014-00190.* Charging Party alleges discrimination and retaliation on the basis of gender in violation of the Equal Pay Act and Title VII. Position Statement/RFI filed July 28, 2014. Waiting for decision from EEOC.  
(Total 143.25 hours – J. Smith)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00190. Charging Party filed Notice of Discrimination on November 6, 2013, and filed the perfected charge December 2, 2013, alleging discrimination under Title VII and violations of the Equal Pay Act. Position Statement/RFI filed January 17, 2104. Waiting for decision from EEOC.  
(Total 162 hours – J. Smith)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00410. Charging Party filed Notice of Discrimination December 4, 2013, alleging discrimination and retaliation under the Americans with Disabilities Act. Position statement /RFI filed April 4, 2014. Waiting for decision from EEOC.  
(Total 119.7 hours – J. Smith)

EMPLOYEE V. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01528. Charging Party files Notice of Discrimination based on Title VII and Age on May 29, 2013. Position Statements and Request for Information responses filed July 25, 2013. Waiting for decision from EEOC.  
(Total 129.25 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01723. Charging Party files second Notice of Discrimination based on ADA discrimination. Position Statements filed August 16, 2013. Waiting for decision from EEOC.  
(Total 211.5 hours – Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-01504. Notice of Charge of ADA Discrimination is filed May 22, 2013. May 29, 2013 Charging Party alleges discrimination based on disability and retaliation. Position Statements filed August 16, 2013. Waiting for decision from EEOC.  
(Total 103.25 hours - Lessig)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02295. September 17, 2013 Charging Party alleges Title VII discrimination on the basis of race and color. Position statements and request for information filed. Waiting for decision from EEOC.  
(Total 132.75 hours – McCall)

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2013-02323. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act,

claiming discrimination based on her gender, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. Waiting for decision from EEOC.

(Total 97.9 hours – Lessig).

EMPLOYEE v. CITY OF COLORADO SPRINGS, EEOC Charge No. 541-2014-00026. Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on his national origin, as well as retaliation. Position Statement and RFI extended to January 6, 2014. Position Statement and Response to Request for Information filed January 6, 2014. Waiting for decision from EEOC.

(Total 100.9 hours – Lessig).

EMPLOYEE v. CITY OF COLORADO SPRINGS, CCRD Charge No. E20140163 – Charging Party filed the charge of discrimination under Title VII of the Civil Rights Act, claiming discrimination based on race, and retaliation. The City’s Position Statement and RFI Response extended to December 20, 2013. Position Statement and Response to Request for Information filed December 20, 2013. **Received Dismissal and Notice of Rights from the EEOC, issued October 29, 2014. The Deadline to file any lawsuit is January 30, 2015.**

(Total 88.4 hours – McCall).

**UTILITIES ADMINISTRATIVE/REGULATORY MATTERS**

**Total Active Application Cases:    7 (1 Diligence case)**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
04CW132	Denver Basin Groundwater Return Flow Exchange
05CW96	Leased Water Exchange
06CW120	ROY Exchange Application
07CW122	Pueblo Reservoir and Williams Creek Reservoir
12CW31	Upper Williams Creek Reservoir
13CW3077	Green Mountain Reservoir
13CW9	Arkansas River Exchange (Diligence)

**Application Cases Before Water Referee:            1**

**Application Cases Before Water Judge:            6**

**Total Objector Cases:                            53**

**Active    30**

**Stipulated    23**

**Active Before Water Referee:            38**

**Active Before Water Judge:            15**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
88CW23(B)	Triview Metropolitan District
96CW233	City of Cripple Creek
98CW174	City of Cripple Creek
05CW91	PC Water, LLC
05CW107(B)	City of Lamar
07CW127	Colorado Water Protective & Development Association
07CW128	Colorado Water Protective & Development Association
08CW12	Booth Well Association
10CW4	Lower Arkansas Valley Water
11CW3	Shane, Gary, et al.
11CW13	City of La Junta
11CW77	Lower Arkansas Valley Water & Larkspur, Inc.
12CW94	Catlin Augmentation
12CW124	Climax Molybdenum Company
12CW176	Climax Molybdenum Company

## WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL

### Active cases:

Municipal – 46  
Utilities – 12  
Memorial - 1

### Subrogation cases handled by outside counsel:

Municipal – 0  
Utilities – 0

### Subrogation cases handled by City Attorney's Office:

Municipal – 4  
Utilities – 2

## HOSPITAL COLLECTION MATTERS

### 473 filed in October 2014

Credit Service Company – 320  
BC Services – 153

## CRIMINAL PROSECUTIONS SECTION

### (MUNICIPAL COURT)

	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>OCTOBER</u>
Cases Docketed for Trial by Court	480	546	433
Cases tried:	232	216	214
Cases handled without trial:	248	331	279
Cases Docketed for Trial by Jury:	19	11	19
Cases tried:	2	2	1
Cases handled without trial:	17	9	18
Cases Handled on Deferred Docket:	137	192	243
Cases Handled at Pretrial:	643	643	559
Cases Handled at Arraignments:	840	1207	1168
Mailed Dispositions:	32	52	5
Deferred Sentences at Arraignment:	1	1	0
Criminal Arraignments Screened:	690	840	823
Jail Docket:	424	443	567
Liquor Hearings:	6	5	1
NPOI:	964	1411	1276
Good Driver Letters Mailed:	865	816	914
<b>TOTAL MATTERS:</b>	<b>3789</b>	<b>4467</b>	<b>4063</b>