


# QUARTERLY REPORT TO CITY COUNCIL

**Relating to:**  
**LITIGATION AND ADMINISTRATIVE MATTERS**

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**May 2022**  
(Covering All Activity through May 31, 2022)

  
Wynetta Massey  
City Attorney/Chief Legal Officer



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## 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. Municipal court appeals have not been included unless they involve significant issues.

### DISPOSED CASES

Estate of De’Von Bailey, by and through its personal representatives Delisha Searcy and Greg

Bailey v. City of Colorado Springs, Sergeant Alan Van’tland, and Officer Blake Evenson

United States District Court Case No. 20-cv-1600-WJM-KMT

CLAIM: Plaintiff claims excessive force and violation of fourth amendment rights.

STATUS: June 5, 2020 City waived service of summons and complaint. July 28, 2020 Defendants file joint motion to stay proceedings. July 28, 2020 Court grants joint motion to stay proceedings. October 2, 2020 parties file joint status report. October 14, 2020 City files motion to dismiss. October 14, 2020 defendants; file joint designation of non-party liability. October 14, 2020 officer defendants’ file motion to dismiss. November 2, 2020 parties file joint status report. November 3, 2020 Court amends order setting initial case deadlines. November 4, 2020 Defendants file motion to stay discovery. November 4, 2020 Court grants motion for extension of time to file reply. November 12, 2020 Plaintiff files response to motion for stay. November 17, 2020 Court denies Defendant’s motion for stay. November 23, 2020 Plaintiff files response to Defendants’ motion to dismiss. November 24, 2020 Court files scheduling order. November 30, 2020 Plaintiff files a stipulated motion to dismiss. November 30, 2020 Court grants stipulated motion to dismiss. December 7, 2020 City files reply to motion to dismiss. December 17, 2020 officers file reply to motion to dismiss. February 3, 2021 parties file joint stipulated motion for protective order. February 9, 2021 Court grants stipulated motion for protective order. February 12, 2021 defendants file motion for protective order and stay of discovery. March 6, 2021 Plaintiff files response to motion for protective order. April 14, 2021 Court grants motion for protective order. May 4, 2021 Court files stipulated protection order. June 4, 2021 Officer Defendants file motion for protective order regarding text messages. June 16, 2021 Parties file joint motion for protective order. June 16, 2021 Plaintiffs file response to joint motion for protective order. June 18, 2021 Court grants motion to amend scheduling order. July 12, 2021 Court grants motion for protective order regarding text messages. September 1, 2021 Court issues order to file a joint status report. September 7, 2021 parties file joint status report. September 14, 2021 Court files order administratively closing case. October 12, 2021 Plaintiff files motion to administratively reopen case and dismiss with prejudice all claims by Plaintiff R.B. October 14, 2021 Court issues order granting in part Plaintiff’s unopposed motion to administratively reopen case and dismiss with prejudice all claims by Plaintiff R.B. December 21, 2021 City files motion to find adequacy of representation. January 18, 2022 Court grants motion to find adequacy of representation. February 9, 2022 Defendant Officers’ file stipulated motion to dismiss Officer Defendants’ with prejudice. February 9, 2022 Court grants stipulated motion to dismiss Officer Defendants’ with prejudice. **March 8, 2022 City files stipulated motion to dismiss. March 8, 2022 Court terminates case pursuant to stipulated motion to dismiss.**

(Lamphere/ Vaughan and DeMuro)

Christian Diaz v. Marcus Allen, in his individual and official capacity; Tyler Bresson, in his individual and official capacity; Nicholas Hamaker, in his individual and official capacity; Eric Anderson, in his individual and official capacity; and the City of Colorado Springs

United States District Court Case No. 21-cv-193

CLAIM: Plaintiff claims discrimination based on religious beliefs and skin color during religious worship at Green Faith Ministry.

STATUS: March 18, 2021 City served summons and complaint. April 6, 2021 City files entry of appearance on behalf of defendants. May 14, 2021 Defendants file motion to dismiss. May 17, 2021 City files motion for protective order and to reset deadlines. May 18, 2021 Court grants motion to stay deadlines. June 4, 2021 Plaintiff files amended complaint. June 4, 2021 case is reassigned to Judge Arguello. June 8, 2021 Court denies motion to dismiss as moot. June 18, 2021 City files motion to dismiss amended complaint. June 22, 2021 Court files amended order setting case deadlines. June 28, 2021 City files motion for protective order vacating initial case deadlines. July 2, 2021 Plaintiff files response to motion to dismiss amended complaint. July 7, 2021 City files reply to response to motion to dismiss. July 7, 2021 City files motion to consolidate. July 13, 2021 Court issues order staying case deadlines. January 10, 2022 Court grants motion for protective order staying discovery. January 27, 2022 Court issues recommendation of United States Magistrate Judge. February 3, 2022 Plaintiff files objection to recommendation of United States Magistrate Judge. February 17, 2022 Defendant files response to objection to the Magistrate Judge's recommendation. February 23, 2022 Court issues order affirming in part and rejecting in part recommendation of United States Magistrate Judge. February 24, 2022 Court issues final judgment.

(Turner)

City of Colorado Springs v. Garden Valley Water and Sanitation District, a Colorado quasi-municipal corporation and political subdivision; Mark Lowderman, El Paso County Treasurer

El Paso County District Court Case No. 21CV31807

CLAIM: Petitioner City of Colorado Springs is undertaking a roadway improvement project and acquiring a permanent easement on the Property for public use.

STATUS: November 8, 2021 City files petition in condemnation, notice of lis pendens, and motion for immediate possession. December 2, 2021 Defendant files unopposed motion for extension of time. December 5, 2021 Court grants unopposed motion for extension of time. December 21, 2021 Defendant files second motion for extension of time. December 21, 2021 Court grants Defendants second motion for extension of time. December 29, 2021 Mark Lowderman files disclaimer. February 4, 2022 Court grants second motion for extension of time. February 4, 2022 parties file joint motion for extension of time to respond to petition in condemnation and motion for immediate possession. February 17, 2022 City files notice of dismissal without prejudice. February 22, 2022 Court orders case dismissed without prejudice.

(Turner)

Lawrence Johnson v. Brian Kelly, K-9 Broc, and Colorado Springs Police Department

United States District Case No. 20-cv-2373

CLAIM: Plaintiff claims he was attacked by K-9 Broc while in restraints.

STATUS: March 15, 2021 City served summons and complaint. April 6, 2021 City files motion to dismiss. May 24, 2021 Court issues order for Plaintiff to show cause. June 4, 2021 City files notice of mail undeliverable. June 9, 2021 Court orders case dismissed without prejudice. July 6, 2021 Court files final judgment. August 4, 2021 Plaintiff files notice of change of address. August 6, 2021 Court files order reinstating case. August 31, 2021 Court's mail returned undeliverable. November 24, 2021 Court issues recommendation of United States magistrate Judge. December 15, 2021 Court issues order adopting November 24, 2021 recommendation of United States Magistrate Judge. December 16, 2021 Court issues final judgment.  
(Doherty)

Michael Sexton v. City of Colorado Springs; Raymond Lingley, in his official and individual capacity; Marvin Forbes, in his official and individual capacity; William Giannini, in his official and individual capacity; Peter Tomitsch, in his official and individual capacity; Scott Wisler, in his official and individual capacity; Tracy Toth, in her official and individual capacity; Roberto Williamson, in his official and individual capacity.

United States District Court Case No. 20-cv-2248-KMT

CLAIM: Plaintiff claims his First Amendment right was violated when he was stopped, detained and arrested for engaging in free speech.

STATUS: August 13, 2020 City waives service of summons and complaint. August 20, 2020 City files entry of appearance. August 20, 2020 City files motion to reschedule initial case deadlines. August 21, 2020 Court files order granting motion to reschedule case deadlines. August 21, 2020 Court files amended order setting initial case deadlines. September 29, 2020 Plaintiff files non-consent form. September 30, 2020 case reassigned to Judge William J. Martinez. October 13, 2020 City files partial motion to dismiss. October 13, 2020 City files motion for protective order from discovery and to vacate scheduling order. October 27, 2020 Plaintiff files response to motion to dismiss. October 27, 2020 Plaintiff files response to motion for protective order from discovery and to vacate scheduling order. November 2, 2020 Court grants motion for protective order. November 10, 2020 City files reply in support of motion to dismiss. November 20, 2020 Plaintiff files objection to Magistrate's protective order. December 4, 2020 City files response to objection to Magistrate's protective order. April 6, 2021 Plaintiff files notice of supplemental authority. April 22, 2021 Plaintiff files early motion for partial summary judgment. May 12, 2021 City files response to early motion for partial summary judgment. May 25, 2021 Plaintiff files reply to motion for early motion for summary judgment. May 28, 2021 Court files order striking Plaintiff's reply. June 2, 2021 Plaintiff files amended reply to early motion for summary judgment. July 7, 2021 Court files order granting in part and denying in part Defendant's motion to dismiss. July 21, 2021 City files answer. July 21, 2021 City files motion for summary judgment. July 21, 2021 City files motion to stay discovery. July 22, 2021 City files motion to reschedule July 28, 2021 deadline for submission of proposed scheduling order. July 23, 2021 Plaintiff files response to motion to reschedule July 28, 2021 deadline for proposed scheduling order. July 23, 2021 City files reply to response to motion to reschedule July 28, 2021 deadline for submission of proposed scheduling order. July 26, 2021 Court grants motion to reschedule July 28, 2021 deadline for submission of proposed scheduling order. July 27, 2021 Plaintiff files response to motion for protective order. August 9, 2021 City files reply to motion for protective order. August 10, 2021 Court grants motion to stay. August 10, 2021 Plaintiff files motion for denial of early motion for summary judgment. August 11, 2021 Plaintiff files response to early motion for summary judgment. August 24, 2021 City files motion for extension of time to file reply to motion for summary judgment. August 24,

2021 Court grants motion for extension of time to file reply. September 14, 2021 City files reply to motion for summary judgment. January 19, 2022 Court files order denying Plaintiff's early motion for summary judgment and granting in part and denying in part Defendants' early motion for summary judgment. January 27, 2022 parties file proposed scheduling order. January 31, 2022 Court issues scheduling order. **April 29, 2022 parties file stipulation of dismissal with prejudice.**  
(Turner)

## NEW CASES

Karen Calvert and Mike Calvert v. Arturo Acosta d/b/a Araco Concrete, Sherwood Construction CO. Inc., Wildcat Construction CO Inc., Jacobs Engineering Group, Inc., City of Colorado Springs, and Felsburg, Holt and Ullevig, Inc.

El Paso County District Court Case No. 22CV30672

CLAIM: Plaintiff claims she lost control of her bike on a curb cut maintained by the City along Colorado Avenue. Plaintiff claims the curb cut caused her to crash her bike and sustain injuries.

STATUS: April 29, 2022 City served with summons and complaint.

(McKinney)

Veal, Darryl v. Colorado Springs Police Department

El Paso County District Court Case No. 22CV43

CLAIM: Plaintiff claims Colorado Springs Police Department wrongfully arrested him and violated his rights relating to the Victims Right Act.

STATUS: March 7, 2022 City was served summons and complaint. March 8, 2022 Court files order to consolidate cases. March 21, 2022 Plaintiff files amended complaint. March 21, 2022 Plaintiff files amended complaint. March 23, 2022 Court files order on amended complaint. March 30, 2022 Plaintiff files letter to the Court. April 6, 2022 Court issues order on the letters to the Court. April 11, 2022 Plaintiff files four letters to the court. April 13, 2022 Court files notice of fees. April 25, 2022 Court issues order dismissing case without prejudice. May 5, 2022 Plaintiff files change of address.

(Doherty)

Brian Reynoso v. Unknown Colorado Springs Police Officer

El Paso County District Court Case No. 22CV114

CLAIM: Plaintiff alleges an unknown Colorado Springs Police Officer used excessive force when Plaintiff entered a car. Plaintiff claims Defendant fired into the vehicle striking Plaintiff in the arm.

STATUS: April 8, 2022 City served summons and complaint. April 28, 2022 City files motion to dismiss.

(Stewart)

Francisco Serna and Ajhalei Snoddy v. City of Colorado Springs, El Paso County, State of Colorado, Federal Highway Agency, Colorado Department of Transportation, El Paso County Local Agency, El Paso County Commissioners

United States District Court for the Western District of Texas Case No. 21-CV-939

CLAIM: Plaintiff alleges the City did not follow the Uniform Relocation Act and Real Property Acquisition Act.

STATUS: February 2, 2022 City waives service on behalf of City of Colorado Springs. February 17, 2022 Plaintiff files first amendment to petition allegations of violation of due process rights. February 18, 2022 Plaintiff files response to Dave Watts' motion to dismiss. February 18, 2022 County defendants file motion to dismiss or, in the alternative, for change of venue. February 28, 2022 Federal Highway Administration files motion to dismiss. March 1, 2022 Plaintiff files motion to strike defenses of Dave Watts, or as an alternative, motion for more definite statement. March 4, 2022 County defendants file motion to dismiss amended complaint or, in the alternative, for change of venue. March 8, 2022 Plaintiff files motion for more definite statement under Rule 12(e). March 11, 2022 Plaintiff files response to motion to dismiss filed by Federal Highway Administration. March 15, 2022 City files entry of appearance on behalf of City of Colorado Springs. March 18, 2022 Defendant Federal Highway Administration files reply to motion to dismiss. March 21, 2022 Plaintiff files response to El Paso County's motion to dismiss. March 21, 2022 Defendant El Paso County files response to Plaintiff's motion for more definite statement. March 22, 2022 Defendant Dave Watt's and Colorado Department of Transportation file response to Plaintiff's motion to strike. March 28, 2022 City files motion to dismiss. April 4, 2022 Defendant Irvine files motion to dismiss amended complaint or, in the alternative, for change of venue. April 4, 2022 Defendants State of Colorado and Jared Polis file motion to dismiss. April 6, 2022 Plaintiff files reply in support of motion for more definite statement from El Paso County. April 8, 2022 Plaintiff files reply to Colorado Department of Transportation's motion to dismiss. April 11, 2022 Plaintiff files response to City's motion to dismiss.  
(Turner)

Wainwright, Nolan v. 510 N. Wahsatch, LLC a/k/a Evan Breese, City of Colorado Springs, Jeremy and Alyssa Barnes, Eric Gustafson, and Amelia Ianetta

El Paso County District Court Case No. 22CV30245

CLAIM: Plaintiff alleges Defendants were negligent in clearing the snow and ice in the parking area.

STATUS: February 28, 2022 City served summons and complaint. March 21, 2022 City files answer. April 14, 2022 Defendant Barnes files Answer. April 22, 2022 Plaintiff files notice of dismissal for Defendant Gustafson and Ianetta. May 3, 2022 Defendant Wahsatch, LLC files answer.

(Turner/McKinney)

## CURRENT CASES

### COUNCIL

2424 GOTG, LLC v. City of Colorado Springs

El Paso County District Court Case No. 21CV31499

CLAIM: Plaintiff claims City Council abused its discretion in denying the requested zone change.

STATUS: September 23, 2021 City waives service of summons and complaint. October 19, 2021 City files answer. October 19, 2021 City files response to motion requiring certification of record. October 28, 2021 Court orders certification of record by November 19, 2021. November

5, 2021 City files motion for extension of time. November 8, 2021 Court grants motion for extension of time. Certified record due December 31, 2021. December 29, 2021 City files certified record. February 1, 2022 Plaintiff files motion for extension of time. February 3, 2022 Court grants Plaintiff's motion for extension of time. February 9, 2022 City files motion to correct record. February 10, 2022 Court grants motion to correct record. February 10, 2022 Plaintiff files second request for extension of time to file opening brief. February 10, 2022 Court grants Plaintiff's request for extension of time to file opening brief. February 18, 2022 Plaintiff files opening brief. **April 8, 2022 City files answer brief. April 22, 2022 Plaintiff files reply brief. May 20, 2022 District Court issues order denying request to set aside City Council's decision.**  
(Stewart/Lamphere)

Raymond Marshall v. Linda Dix, in her individual and official capacity, City Council of Colorado Springs, and City of Colorado Springs

United States District Court Case No. 21-cv-1971-RM-STV

CLAIM: Plaintiff asserts claims for malicious prosecution, violation of due process, a Frank claim, and civil conspiracy related to his criminal prosecution.

STATUS: July 20, 2021 complaint filed. July 22, 2021 Court issues order setting scheduling conference. August 18, 2021 El Paso County waives service. August 26, 2021 City waives service. September 24, 2021 Defendants file joint unopposed motion to stay. October 6, 2021 parties file motion for extension of time. October 6, 2021 Court grants joint motion for extension of time. October 22, 2021 Plaintiff files notice of amended complaint. December 2, 2021 parties file joint motion to extend and consolidate response deadline. December 2, 2021 Court grants joint motion to extend and consolidate response deadline. January 28, 2022 City files motion to dismiss. February 9, 2022 Plaintiff files motion for additional time to file response to defendants' motions to dismiss. **May 19, 2022 Plaintiff files response to Defendants' motion to dismiss.**  
(Lamphere/Sparks Willson)

MAYOR

VDARE Foundation v. City of Colorado Springs, John Suthers

United States District Court Case No. 18-cv-03305

Tenth Circuit Case No. 20-1162

CLAIM: Plaintiff alleges violation of 42 U.S.C. § 1983 and First Amendment retaliation claim after Defendants issued a public statement regarding VDARE conference.

STATUS: Complaint filed December 21, 2018. Waiver of the service signed January 9, 2019. April 17, 2019 City files motion to dismiss. May 24, 2019 Plaintiff files response to Defendants' motion to dismiss. June 7, 2019 City files reply to Plaintiff response. January 29, 2020 United States Magistrate judge issues order recommending dismissal of federal claims. February 12, 2020 Plaintiff files objection to magistrate judge recommendation. March 4, 2020 City files response to objections to the recommendation of the United States magistrate judge. March 27, 2020 Court files order adopting the recommendation of United States Magistrate Judge. March 30, 2020 final judgment ordered in favor of defendant. April 24, 2020 Plaintiff files notice of appeal. July 23, 2020 Plaintiff files motion for extension of time to file opening brief. Opening brief due August 14, 2020. August 14, 2020 Plaintiff files opening brief and appendix. September 10, 2020 Court changes deadline for appellees' response brief. October 14, 2020 City files response brief and supplemental appendix. November 4, 2020 Plaintiff files reply brief. January 13, 2021 Court issues



order scheduling oral argument for March 4, 2021. August 23, 2021 Tenth Circuit issues opinion affirming district court order dismissing action. September 7, 2021 Plaintiff files petition for rehearing. September 20, 2021 Court issues order denying petition for rehearing. September 28, 2021 Court issues mandate. December 23, 2021 Plaintiff files petition for writ of certiorari. **February 28, 2022 U.S. Supreme Court denies Plaintiff's petition for writ of certiorari.**  
(Lamphere)

## PARKS AND RECREATION

### Tashina Almanza v. City of Colorado Springs

El Paso County District Court Case No. 21CV31185

CLAIM: Plaintiff claims the City failed to properly maintain playground equipment resulting in injury.

STATUS: August 11, 2021 City served summons and complaint. August 31, 2021 City files motion for enlargement of time to file responsive pleading. September 1, 2021 Court grants City's motion for enlargement of time to file responsive pleading. September 21, 2021 City second motion for enlargement of time to file responsive pleading. November 11, 2021 Plaintiff files motion for extension of time. November 15, 2021 Court grants Plaintiff's motion for extension of time. November 19, 2021 Plaintiff files response to motion to dismiss. December 2, 2021 Plaintiff files amended complaint. December 16, 2021 City files motion to dismiss amended complaint. January 7, 2022 Plaintiff files response to motion to dismiss amended complaint. January 13, 2022 City files reply to motion to dismiss amended complaint. January 25, 2022 Court denies City's motion to dismiss. February 8, 2022 City files answer. **March 8, 2022 City files motion to dismiss and request for Trinity hearing. March 22, 2022 Plaintiff files response to motion to dismiss and request for Trinity hearing. March 28, 2022 parties file proposed case management order. March 29, 2022 City files reply to motion to dismiss and request for Trinity hearing. April 12, 2022 Plaintiff files notice of jury trial. May 2, 2022 Court grants order for Trinity hearing. May 5, 2022 City files notice to set Trinity hearing.**

(Doherty)

## POLICE

### Carl Andersen, Jr. v. City of Colorado Springs, Vito Delcore, Todd Eckert, Carlos Sandoval, Anthony Matarazzo, and Teller County, Colorado

United States District Court Case No. 20-CV-2032

Tenth Circuit Case No. 22-1130

CLAIM: Plaintiff claims that defendants violated his constitutional rights when Defendants' attempted to seize his fiancée's cell phone.

STATUS: September 9, 2020 City served summons and complaint. September 16, 2020 City files entry of appearance. September 16, 2020 officers' served summons and complaint. September 16, 2020 Gordon Vaughan enters appearance on behalf of CSPD Officers. September 21, 2020 Defendants file joint motion for protective order. September 21, 2020 Reid Allison files entry of appearance on behalf of Plaintiff. September 21, 2020 Plaintiff files non consent to United States magistrate judge to conduct proceedings. September 21, 2020 Plaintiff files motion for extension of time to file scheduling order. September 22, 2020 Court denies motion for protective order. September 22, 2020 Court denies motion for extension of time to file scheduling order. October 5, 2020 parties file joint motion for extension of time to file proposed scheduling order. October 6,

2020 Court grants joint motion for extension of time to file proposed scheduling order. October 8, 2020 Defendants' file unopposed joint motion for extension of time to file responsive pleadings. October 8, 2020 Court grants joint motion for extension of time to file answer or otherwise respond. November 16, 2020 City files notice of intent to file motion to dismiss. November 16, 2020 Defendants file answer. November 25, 2020 Court files order setting trial dates. November 30, 2020 parties file joint motion for protective order. December 1, 2020 Court grants joint motion for protective order. January 27, 2021 Court issues order on City's notice to file motion to dismiss. February 3, 2021 City files motion to dismiss. February 22, 2021 Plaintiff files motion for extension of time to respond to motion to dismiss. February 23, 2021 Court grants Plaintiff's motion for extension of time. March 3, 2021 Plaintiff files response o City's motion to dismiss. March 17, 2021 City files reply to motion to dismiss. Plaintiff files unopposed motion for extension of time of rebuttal experts and discovery. June 10, 2021 Court grants plaintiff motion for extension of time. Defendants file joint motion to strike portions of expert report. August 2, 2021 Plaintiff files motion for extension of time to respond to motion to strike. August 2, 2021 Court grants Plaintiff's motion for extension of time. August 6, 2021 Plaintiff files response to motion to strike. August 12, 2021 Court grants in part and denies in part City's motion to dismiss. August 12 Defendant's file reply to response to motion to strike. August 22, 2021 Defendant Officers file notice of intent to file motion for summary judgment. August 26, 2021 parties file joint motion to amend scheduling order. August 26, 2021 City files answer. August 27, 2021 Defendant Teller County files notice of intent to file motion for summary judgment. August 27, 2021 City files notice of intent to file motion for summary judgment. September 1, 2021 parties file motion to unseal criminal records. September 2, 2021 Court grants motion to modify scheduling order. September 13, 2021 Court files order allowing filing of motion for summary judgment. September 27, 2021 Plaintiff files motion to modify the scheduling order to extend discovery to complete depositions. September 28, 2021 Court grants Plaintiff's motion to modify the scheduling order to extend discovery to complete depositions. October 12, 2021 Defendants' file motion for summary judgment. October 25, 2021 parties file joint motion for separate trials. November 2, 2021 Plaintiff files motion for extension to file responses to motions for summary judgment. November 2, 2021 Court grants motion for extension of time to file responses to motions for summary judgment. November 19, 2021 Plaintiff files response to motion to bifurcate. November 19, 2021 Plaintiff files response to Defendants' Teller County and CSPD Officers' motions for summary judgment. November 24, 2021 Plaintiff files response to City's motion for summary judgment. December 21, 2021 Defendant Teller County files reply to motion for summary judgment. December 22, 2021 Defendant City and CSPD Officers' file reply to motion for summary judgment. **March 14, 2022 Defendants' file motion in limine. March 22, 2022 Officer Defendants file motion to vacate trial based on the Servicemembers Civil Relief Act. March 22, 2022 Court grants motion to vacate trial based on the Servicemembers Civil Relief Act. March 29, 2022 Court issues order on defendants' motion for summary judgment. April 4, 2022 Plaintiff files motion for extension of time to file response to motion in limine. April 5, 2022 Court grants Plaintiffs motion for extension of time to file response to motion in limine. April 11, 2022 Court issues amended order setting trial and trial preparation conference. April 19, 2022 Defendant DelCore files notice of appeal. April 27, 2022 parties file entry of appearance in the Tenth Circuit.**

(Doherty/ Vaughan and DeMuro)

Edward Billings v. City of Colorado Springs, El Paso County Sheriff's Office, Three Other Unknown Agents of the Colorado Springs Police Department and The El Paso County Sheriff's Office

United States District Court Case No. 21-cv-02084

CLAIM: Plaintiff alleges his First, Fourth and Fourteenth Amendment rights were violated during a protest at the Broadmoor World Arena.

STATUS: October 21, 2021 City served summons and complaint. November 12, 2021 City files unopposed motion for extension of time to file responsive pleading and to reschedule the deadline to file a proposed scheduling order. November 29, 2021 Court issues second amended order setting initial case deadlines. December 17, 2021 City files motion to dismiss. December 17, 2021 City files motion for protective order and to vacate deadline to file proposed scheduling order. January 7, 2022 Court grants motion for protective order and to vacate deadline to file proposed scheduling order. January 10, 2022 Plaintiff files motion to file amended complaint. January 10, 2022 Plaintiff files response to motion to dismiss. January 24, 2022 Defendants file motion to dismiss amended complaint. **February 14, 2022 Plaintiff files response to motion to dismiss. February 28, 2022 Defendants' file reply to motion to dismiss.**

(Lamphere)

Estate of Chad Alexander Burnett v. City of Colorado Springs, a municipality, Sergeant Michael Inazu, in his individual capacity, Officer Joseph Daigle, in his individual capacity, Officer Matthew Fleming, in his individual capacity, and Officer Caroline Barth, in her individual capacity

United States District Court Case No. 21-cv-1708

CLAIM: Plaintiff alleges that officers unlawful entered residence of deceased, used excessive force, provided Mr. Burnett with inadequate medical care, and the City had an unlawful custom, policy or practice related to warrantless entry, excessive force and providing medical care.

STATUS: June 24, 2021 summons and complaint received. June 24, 2021 Court sets initial case deadlines. August 30, 2021 City files motion to dismiss. August 30, 2021 City files motion for protective order. September 8, 2021 Plaintiff files non consent to magistrate form. September 8, 2021 case reassigned to Judge Martinez. September 13, 2021 Court strikes City's motion to dismiss without prejudice. September 20, 2021 Plaintiff files response to motion for protective order. September 30, 2021 Plaintiff files motion to amend complaint. October 4, 2021 City files reply to motion for protective order. October 21, 2021 City files response to motion for leave to file amended complaint. October 28, 2021 Plaintiff files reply in support of motion for leave to file amended complaint. January 14, 2022 City files motion to dismiss or, alternatively, partial early motion for summary judgment. January 25, 2022 Court grants motion for protection order. January 28, 2022 Plaintiff files motion for extension of time to file response to motion to dismiss. January 31, 2022 Court denies Plaintiff's motion for extension of time to file response to motion to dismiss. January 31, 2022 Plaintiff files amended motion for extension of time to file response to motion to dismiss. February 18, 2022 Plaintiff files response to motion to dismiss. **March 4, 2022 City files reply to motion to dismiss.**

(Lamphere)

Sasha Cronick v. City of Colorado Springs, Christopher Pryor, in his official and individual capacity, Robert McCafferty, in his official and individual capacity, Daniel Lambert, in his official and individual capacity, Michael Inazu, in his official and individual capacity

United States District Court Case No. 20-CV-00457

CLAIM: Plaintiff claims defendants conduct violated her Fourth Amendment rights.  
STATUS: February 21, 2020 Plaintiff files complaint. March 20, 2020 City served with summons and complaint. March 31, 2020 City files entry of appearance. May 5, 2020 City files motion for protective order from discovery. May 19, 2020 City files motion to dismiss. June 12, 2020 Plaintiff files response to motion to dismiss. June 26, 2020 City files reply brief in support of motion to dismiss. October 8, 2020 Court stays discovery. February 19, 2021 Magistrate Judge issues recommendation granting and denying motion to dismiss in part. March 4, 2021 parties file joint motion for extension of time to file objections to Magistrate Judge's recommendations. March 15, 2021 Plaintiff files motion to file amended complaint. March 15, 2021 Officers' file objections to Magistrate Judge's recommendations. March 22, 2021 City files opposition to Plaintiff's motion to amend complaint. March 24, 2021 City files second motion for protective order. March 26, 2021 Court grants Plaintiff's motion for leave to file amended complaint. March 26, 2021 Court grants City's motion for protective order. April 2, 2021 Plaintiff files amended complaint. April 16, 2021 defendants file motion to dismiss amended complaint. May 7, 2021 Plaintiff files response to motion to dismiss. May 24, 2021 City files reply to motion to dismiss first amended complaint. January 13, 2022 Court grants in part and denies in part City's motion to dismiss. January 27, 2022 City files answer. February 10, 2022 Court issues scheduling order. (Doherty)

Brian Halik v. Officer A. Brewer, in his individual and official capacity and unknown officers of the tactical enforcement unit

United States District Court Case No. 21-cv-00508

CLAIM: Plaintiff claims defendants were untruthful in an affidavit in support of a search warrant, and unlawfully damaged and searched his home and person.

STATUS: May 19, 2021 City served with summons and complaint. June 9, 2021 City files motion to dismiss. July 1, 2021 Plaintiff files motion for extension of time. July 12, 2021 Court grants motion for extension of time. July 22, 2021 Plaintiff files second motion for extension of time. July 22, 2021 Court grants second motion for extension of time. August 5, 2021 Plaintiff files response to motion to dismiss. August 19, 2021 City files reply in support of motion to dismiss. February 17, 2022 Court issues recommendation of United States magistrate Judge.

**March 4, 2022 City files objection to the recommendation of United States Magistrate Judge. Court issues order recommending in part and denying in part the recommendation of United States Magistrate Judge. March 28, 2022 Court issues order on objection to the recommendation of United States Magistrate Judge.**

(Turner)

Jeffery Melvin v. City of Colorado Springs, Daniel Patterson, in his individual capacity, and Joshua Archer, in his individual capacity

United States District Court Case No. 20-CV-00991

CLAIM: Plaintiff claims excessive force resulting in death.

STATUS: April 8, 2020 Complaint filed. April 15, 2020 Waivers of service filed for City and Patterson. June 10, 2020 City files motion to dismiss. June 10, 2020 City files motion for protective order from discovery and to vacate scheduling conference. June 26, 2020 Plaintiff files motion for extension of time to file response to motion to dismiss. July 1, 2020 Plaintiff files amended complaint. July 1, 2020 Plaintiff files response to motion for protective order. July 2, 2020 City files motion for separate trials of individual and municipal liability claims and for protective order

from discovery on Plaintiff's municipal liability claims. July 2, 2020 City files motion to reschedule Fed. R. Civ. P. 16(b) scheduling and planning conference. July 6, 2020 Plaintiff files motion for additional time to serve Defendant Joshua Archer. July 7, 2020 Court grants motion to reschedule scheduling and planning conference. July 7, 2020 Court grants Plaintiff's motion for additional time to serve Defendant Joshua Archer. July 7, 2020 City files motion to dismiss amended complaint. July 23, 2020 Plaintiff files response to motion to bifurcate. July 24, 2020 Plaintiff files motion for extension of time to file response to motion to dismiss amended complaint. July 24, 2020 Court grants Plaintiff's motion for extension of time to file response to motion to dismiss amended complaint. August 4, 2020 Plaintiff files response to motion to dismiss. August 6, 2020 City files reply to response to motion to bifurcate. August 10, 2020 Plaintiff files motion for leave to serve Defendant Joshua Archer by substituted service of process. August 18, 2020 City files reply in support of motion to dismiss amended complaint. August 31, 2020 City files response to motion for leave to serve Defendant Joshua Archer by substituted service of process. September 2, 2020 Plaintiff files second unopposed motion for additional time to serve Defendant Joshua Archer. September 14, 2020 Plaintiff files unopposed motion for extension of time to file reply to Plaintiff's motion for leave to serve Defendant Joshua Archer by substituted service of process. September 15, 2020 Court grants motion for extension of time to file reply to motion for leave to serve Defendant Joshua Archer by substituted service. September 17, 2020 Plaintiff files reply to response to motion for leave to serve Defendant Joshua Archer by substituted service of process. October 7, 2020 Court orders City to provide Defendant Joshua Archer's email address to Plaintiff. October 8, 2020 City files motion for protective order from discovery. October 19, 2020 Court orders Plaintiff to file a status report on or before November 16, 2020. October 29, 2020 Plaintiff files response to motion for protective order. October 29, 2020 Plaintiff files response to motion for protective order. November 12, 2020 City files reply in support of motion for protective order. November 16, 2020 Plaintiff files waiver of service for Joshua Archer. November 16, 2020 Plaintiff files status report. December 18, 2020 City files joinder of Defendant Joshua Archer in partial motion to dismiss amended complaint. January 6, 2021 Court denies motion for separate trials. February 22, 2021 Magistrate Judge issues order recommending motion to dismiss be granted in part and denied in part. March 4, 2021 Plaintiff files unopposed motion for extension of time to file objection to Magistrate Judge's order. March 11, 2021 Court grants Plaintiff's motion for extension of time to file objection. March 15, 2021 Plaintiff files objection to Magistrate Judge's order recommending motion to dismiss be granted in part and denied in part. March 29, 2021 City files response to Plaintiff's objection. April 1, 2021 City files motion to vacate deadline for submission of proposed scheduling order and City's renewed motion for protective order from discovery. April 2, 2021 Court grants City's motion to vacate deadline for submission of proposed scheduling order and City's renewed motion for protective order from discovery. April 5, 2021 Plaintiff files motion for fees and costs. April 7, 2021 Plaintiff files notice of supplemental authority. April 27, 2021 City files response to motion for fees and costs. May 6, 2021 Plaintiff files motion for extension of time to reply to response for fees and costs. May 10, 2021 Court grants motion for extension of time to reply to motion for fees and costs. May 17, 2021 Plaintiff files reply to motion for fees and costs. September 29, 2021 the Court issues order affirming in part and rejecting in part Magistrate Judge recommendation. September 29, 2021 Court issues order lifting stay. October 13, 2021 City Defendants files answer. October 20, 2021 parties file proposed scheduling order. October 21, 2021 Court issues scheduling order. January 31, 2022 parties file a joint motion for entry of protective order. January 31, 2022 Court grants

joint motion for entry of protective order. January 31, 2022 Court issues stipulated protective order.  
**February 24, 2022 Court issues order denying Plaintiff's motion for fees and costs.**  
(Turner)

John Mullins v. The City of Colorado Springs; Brian Kelly, in his individual capacity  
States District Court Case No. 21-cv-589

CLAIM: Plaintiff alleges excessive and mental anguish when CSPD used a K-9 to arrest Plaintiff.

STATUS: Summons and Complaint served May 5, 2021. May 7, 2021 City files entry of appearance. May 14, 2021 City files motion to reset scheduling order. July 6, 2021 City files motion to dismiss. August 3, 2021 Plaintiff files response to motion to dismiss. August 8, 2021 Defendants file amended motion to dismiss. August 17, 2021 City files reply in support of motion for a protective order and to stay discovery. August 27, 2021 Plaintiff files response to motion to dismiss. September 10, 2021 City files reply to motion to dismiss. December 15, 2021 Court grants in part and denies in part City's motion to dismiss. December 29, 2021 City files answer. January 24, 2022 parties file proposed scheduling order.

(Stewart)

Andrew Scott v. Charles D. Hiller in his individual and official capacity, Matthew Packard in his individual and official capacity as a Colonel in the Colorado State Patrol, Michael Allen in his individual and official capacity as the District Attorney for the 4<sup>th</sup> Judicial District of Colorado, Colorado Springs Police Department, Colorado's Office of the Attorney General, and Governor Jared Polis

United States District Court Case No. 21-cv-2011-PAB-KMT

CLAIM: Plaintiff claims trooper Hiller started a retaliatory campaign after personal service of a Subpoena. Plaintiff fears Colorado Springs Police Department would arrest him for the allegations made by any of the defendants involved.

STATUS: July 27, 2021 summons and complaint served. August 11, 2021 Defendant Colorado Attorney General files motion for extension of time. August 17, 2021 City files motion to dismiss. August 27, 2021 Plaintiff files response to motion to dismiss. August 27, 2021 Plaintiff files motion to join City as defendant. September 8, 2021 City files reply to motion to dismiss. September 17, 2021 City files response to motion to join City as defendant. October 4, 2021 State files motion to dismiss. October 25, 2021 Plaintiff files motion to stay proceedings. January 13, 2022 Plaintiff files notice of filing amended complaint. January 13, 2022 Plaintiff files amended complaint dismissing Colorado Springs Police Department from suit. January 14, 2022 Court denies as moot Defendants' motion to dismiss. February 10, 2022 Plaintiff files motion for extension of time to submit proposed scheduling order. **March 1, 2022 Defendants Hillard and Packard file motion to dismiss. March 24, 2022 Plaintiff Allen files motion to dismiss. April 5, 2022 Plaintiff files response to Defendants Hillard and Packard motion to dismiss. April 5, 2022 Plaintiff files motion to restrict public access. April 14, 2022 Plaintiff files response to Defendant Allen's motion to dismiss. April 27, 2022 Defendant Allen files reply to motion to dismiss. April 29, 2022 Defendant Packard files reply to motion to dismiss.**

(Stewart)

Candace Sgaggio v. John Suthers, in his individual and official capacity; Don Knight, in his individual and official capacity; David Geislinger, in his individual and official capacity; Richard

Skorman, in his individual and official capacity; Yolanda Avila, in her individual and official capacity; Jill Gaebler, in her individual and official capacity; Bill Murray, in his individual and official capacity; Tom Strand, in his individual and official capacity; Wayne Williams, in his individual and official capacity; Marcus Allen, in his individual and official capacity; Tyler Bresson, in his individual and official capacity; Nicholas Hamaker, in his individual and official capacity; Eric Anderson, in his individual and official capacity; Vince Niski, in his individual and official capacity; and The City of Colorado Springs

United States District Court Case No. 21-cv-163

Tenth Circuit Case No. 22-1138

CLAIM: Plaintiff claims violation of her first amendment right when Colorado Springs Police violated free exercise of religion.

STATUS: March 12, 2021 City waived service of summons and complaint. April 6, 2021 City files entry of appearance on behalf of defendants. May 7, 2021 City files motion to dismiss. May 11, 2021 Plaintiff files non consent to Magistrate May 11, 2021 Case- reassigned to Judge Jackson; Court denies City's motion to dismiss without prejudice. June 18, 2021 Plaintiff files motion for extension of time to file amended complaint. June 21, 2021 Court grants motion for extension of time to file amended complaint. June 23, 2021 Plaintiff files amended complaint. July 7, 2021 City files notice of motion to consolidate. July 7, 2021 City files motion to stay. July 23, 2021 Plaintiff files response to motion to stay. August 5, 2021 City files reply to response to motion to stay. August 10, 2021 Court grants motion to stay. October 5, 2021 City files notice of intent to file motion to dismiss. October 15, 2021 Court lifts stay and invites filing of motion to dismiss. October 22, 2021 Defendants file motions to dismiss. October 24, 2021 Plaintiff files response to notice of intent to file motion to dismiss. November 15, 2021 Plaintiff files response to individual defendants' motion to dismiss. November 16, 2021 Plaintiff files response to City's motion to dismiss. November 29, 2021 Defendants file reply to motion to dismiss. **March 3, 2022 City files notice of supplemental authority. March 31, 2022 Court files order granting City's motion to dismiss. March 31, 2022 Court issues final judgment. April 13, 2022 City files motion for attorney fees. April 25, 2022 Plaintiff files notice of appeal. April 29, 2022 Plaintiff files motion for reconsideration.**

(Turner)

Delbert Sgaggio v. Brett Poole, Roger Vargason, Danielle McClarin, Angie Neives, Brett Lacey, Robert Mitchell, DA Dan May, E.M. Land 4250, Lt. Godsey, Bill Elder, etc.

United States District Court Case No. 19CV1975

CLAIM: Plaintiff claims Defendants violated his 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Amendment rights.

STATUS: July 11, 2019 Summons and Complaint served. August 29, 2019 City Defendants file motion to dismiss. September 19, 2019 Plaintiff files Notice and Motion under FRCP 15(a)(1)(B) to amend complaint. October 10, 2019 Defendants file response to Plaintiff's Motion to amend his complaint. October 17, 2019 Plaintiff moves to strike Motion to Amend complaint. October 21, 2019 Order grants Plaintiff's motion to withdraw Motion to Amend complaint. February 28, 2020 Magistrate Judge issues Recommendation on Defendants' motions to dismiss. March 11, 2020 Plaintiff files objection to Magistrate Judge recommendation. March 25, 2020 Magistrate Judge withdraws recommendation and Plaintiff's amended complaint is filed. April 8, 2020 Defendants file motions to dismiss amended complaint. April 22, 2020 Plaintiff files motion for leave to file second amended complaint. April 22, 2020 Plaintiff files responses to Defendants' motions to dismiss. May 6, 2020 Defendants file replies in support of motions to dismiss. May 12,

2020 Defendants file joint response to Plaintiff's motion for leave to file a second amended complaint. May 26, 2020 Plaintiff files reply to joint response to Plaintiff's motion for leave to file second amended complaint. February 17, 2021 Court strikes Plaintiff's complaint, denies Plaintiff's motion for leave to file second amended complaint, and orders Plaintiff to file compliant complaint by March 15, 2021. February 18, 2021 Court denies City's motion to dismiss as moot. March 16, 2021 Plaintiff files amended complaint. March 23, 2021 Court issues stay pending review of amended complaint. July 7, 2021 City files motion to consolidate. July 27, 2021 Plaintiff files response to motion to consolidate. August 9, 2021 City files reply to motion to consolidate. August 23, 2021 Court denies motion to consolidate. January 31, 2022 Court issues recommendation of United States Magistrate Judge. **February 16, 2022 Plaintiff files objection to recommendation from the United States Magistrate Judge. March 2, 2022 City files response to objection to recommendation from the United States Magistrate Judge. March 14, 2022 Plaintiff files reply to objection to recommendation from the United States Magistrate Judge.**

(Turner)

## PUBLIC WORKS

Douglas Bruce v. City of Colorado Springs, Pikes Peak Regional Building Department, Roger Lovell, El Paso County, and Mark Lowderman

United States District Court Case No. 21-cv-2427

CLAIM: Plaintiff alleges defendants' actions deprived him of his private property.

STATUS: October 20, 2021 City waives service of summons and complaint. November 29, 2021 Court issues amended order setting initial case deadlines. January 14, 2022 Defendants' file unopposed joint motion to stay discovery and case deadlines. January 17, 2022 Defendants file motion to dismiss. January 17, 2022 Court grants unopposed joint motion to stay discovery and case deadlines. February 4, 2022 Plaintiff files unopposed motion to extend deadline to file opposition to Defendants' motion to dismiss. February 4, 2022 Court grants unopposed motion to extend deadline to file opposition to Defendants' motion to dismiss. **March 16, 2022 Plaintiff files response to motion to dismiss. April 5, 2022 Defendants PPRBD and County files reply to motion to dismiss. April 6, 2022 City files reply to motion to dismiss.**

(Lamphere)

Leigh Ann Wolfe a/k/a Leigh Ann Thurston, an individual; Smiling Days, LLC, a Colorado limited liability company; Flying W, LLC, a Colorado limited liability company; and Overcome, LLC, a Colorado limited liability company v. City of Colorado Springs, a home rule city and Colorado municipal corporation

El Paso County District Court Case No. 21CV30930

Colorado Court of Appeals Case No. 22CA443

CLAIM: Plaintiff claims breach of contract for the construction of a water quality pond. Plaintiff claims the pond was not constructed according to contract.

STATUS: August 19, 2021 City waives service of summons and complaint. September 27, 2021 Plaintiff files verified motion for temporary restraining order. September 29, 2021 Court denies motion for temporary restraining order. October 1, 2021 City files motion to dismiss.

October 8, 2021 Plaintiff files response to motion to dismiss. October 13, 2021 City files unopposed motion for enlargement of time to file responsive pleadings. October 14, 2021 Court



grants City's unopposed motion for enlargement of time to file responsive pleadings. October 15, 2021 Plaintiff files supplement to verified motion for temporary restraining order. October 22, 2021 City files reply to motion to dismiss. October 22, 2021 City files reply brief in opposition to verified motion for temporary restraining order. February 3, 2022 Court issues order granting in part and denying in part City's motion to dismiss. February 17, 2022 City files motion to reconsider Court's order. **February 22, 2022 Plaintiff files response to motion to reconsider. February 23, 2022 City files reply to motion to reconsider. March 3, 2022 Court issues order denying City's motion to reconsider. March 17, 2022 City files notice of appeal.** (Doherty)

## REAL ESTATE SERVICES

City of Colorado Springs, Colorado v. Francisco Serna; Howard Jennings Walters, III; Lidia H. Walters; Thomas S. Mowle, El Paso County Public Trustee; Mark Lowderman, El Paso County Treasurer

El Paso County District Court Case No. 2017CV31927

Colorado Court of Appeals Case No. 2019CA856

Colorado Supreme Court Case No. 20SC791

Case remanded to United States District Court Case No. 21-cv-3444

CLAIM: City seeks condemnation of the Respondent's property for public purpose.

STATUS: August 7, 2017 City files Petition in Condemnation along with Motion for Immediate Possession and its accompanying Brief. September 8, 2017 Notice of Immediate Possession Hearing held October 20, 2017 at 1:30 p.m. Court grants motion for immediate possession. January 12, 2018 Petitioners file response to Courts order for a proposed case management order regarding how the case should proceed. February 9, 2018 Birddog, LLC files cross-petition to intervene and Serna files answer to petition in condemnation. February 27, 2018 Walters file answer to petition in condemnation. March 27, 2018 Court grants in part Birddog's cross-petition to intervene stating that Birddog has a right to intervene because it claims an interest, but Birddog does not have a right to participate in any proceedings prior to it intervening. April 5, 2018 Court appoints commissioners. April 19, 2018 the Voir Dire and first meeting of commissioners scheduled for July 13, 2018. April 25, 2018 Respondents file motion to withdraw and disburse funds on deposit. Petitioner files brief in partial opposition to motion to withdraw and disburse funds on deposit. July 18, 2018 Court files order regarding Commission and Case Management. July 30, 2018 Parties file joint statement on motion to withdraw and disburse funds on deposit and request Courts' determination. December 11, 2018 Petitioner files motion for summary judgment. January 4, 2019 Court grants Petitioner's motion for summary judgment; Respondent Serna files motion to dismiss Petitioner's motion for summary judgment. January 18, 2019 Respondent Serna files motion to compel a final written offer. January 24, 2019 Petitioner files briefs in opposition to respondent Serna's motion to dismiss Petitioner's motion for summary judgment and motion to compel. February 5, 2019 Court denies motion to dismiss petitioner's motion for summary judgment and issues judgment in City's favor; Court denies motion to compel a final written offer. February 6, 2019 Respondent files motion for reconsideration. March 25, 2019 Court denies motion for reconsideration. May 14, 2019 Francisco Serna files Notice of Appeal. May 17, 2019 Notice of Appeal filed by Ajhalei Snoddy. July 16, 2019 Court accepts pleadings and amends the caption to Petitioner-Appellee City of Colorado Springs v. Respondents-Appellants Francisco Serna and Ajhalei Snoddy. August 19, 2019 City files Answer Brief. August

20, 2020 Court issues opinion reversing judgment and remanding case. September 30, 2020 City files petition for writ of certiorari. March 29, 2021 Court denies petition for writ of certiorari. April 4, 2021 Court files Order re status conference. April 16, 2021 City files notice to set status conference. May 14, 2021 City files notice of status conference. August 2, 2021 City files amended notice of status conference. September 21, 2021 City files amended notice of status conference. October 6, 2021 City files third amended notice of status conference. October 15, 2021 Court issues order from status conference. October 27, 2021 Respondents file motion to dismiss the action and notice of removal. November 5, 2021 City files response to respondents' motion to dismiss Petitioner's motion for summary judgment. November 15, 2021 City files motion for enlargement of time to respond to Respondents' motion to dismiss action. December 23, 2021 Defendant files notice of removal. January 4, 2022 Defendant files notice to court regarding transfer of case file. January 4, 2022 Defendant files motion for reconsideration. January 4, 2022 Defendant files motion for enlargement of time to respond to Petitioner's summary judgment motion. January 19, 2022 City files motion to remand. January 20, 2022 Defendant files motion for declaratory relief. January 21, 2022 Defendant files response to motion to remand. January 24, 2022 Defendant files opposed motion to transfer venue. January 25, 2022 Defendant files errata response to motion to remand. January 25, 2022 City files response to Defendants rule 59(e) motion. January 25, 2022 City files response to motion for extension of time. January 26, 2022 City files motion to stay. January 26, 2021 Defendant files motion for extension of time to respond to City rule 59(e) motion. January 31, 2022 Defendant files reply to motion under rule 59(e) motion. February 4, 2022 City files reply to motion to remand. February 10, 2022 City files response to motion for declaratory relief. **February 14, 2022 City files response to Defendants motion to transfer venue. February 15, 2022 Defendants file response to motion to stay proceedings pending a ruling on plaintiff's motion to remand. February 16, 2022 City files response to Defendants' motion for extension of time. February 16, 2022 City files reply in support of motion to stay proceedings pending a ruling on Plaintiff's motion to remand. February 28, 2022 Defendants file reply to motion to transfer venue.**  
(Turner/ Edward J. Bleiszner / Welborn Sullivan Meck & Tooley, P.C.)  
(CC)

## TRANSIT SERVICES

(CC)

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

Court of Appeals, Case Number 20CA346

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(c) 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(c) 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(c) 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 remanded 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 the Court's order of February 28, 2012, to which the City responded in opposition on March 14, 2012, First Transit responded in opposition on March 20, 2012, and ATU replied in support on March 21, 2012 and March 27, 2012. The City re-filed its motion to dismiss in case 12cv81, to which ATU filed a response on March 19, 2012, First Transit filed a response in support on March 20, 2012, and the City replied on March 30, 2012. On March 16, 2012, ATU filed a motion to hold the proceedings in abeyance pending a determination of proper venue, to which the City responded in opposition on March 26, 2012 and ATU replied in support. 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 a judgment was entered in 2007cv1322.

ATU filed 2007cv1322 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 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(c) 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 12cv81 Court that the 07cv1322 Court had entered judgment. October 12, 2012 the Court issued an order denying City's motion to dismiss case 12cv81. On November 8, 2012, the City filed its answer and affirmative defenses to First Transit's third party complaint. May 24, 2013 the Court granted the City and First Transit's stipulation, staying the third party complaint until the claims between ATU and First Transit are resolved. June 17, 2013 ATU and First Transit file separate motions for summary judgment. July 8, 2013 ATU and First Transit file responses in opposition to the opposing party's motions for summary judgment. July 22, 2013 First Transit files reply in support of its motion for summary judgment and ATU files its amended reply in support on July 17, 2013. On July 24, 2013, the Court grants ATU's motion for summary judgment and denies First Transit's motion for summary judgment, requiring ATU and First Transit to proceed to arbitration. August 28, 2013 First Transit files motion for entry of final judgment pursuant to CRCP 54(b) which the Court granted on August 29, 2013. September 19, 2013 First Transit files Notice of Appeal. November 21, 2013 First Transit files opening brief and filed an amended opening brief on December 3, 2013. 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 ATU files objection to First Transit's motion to lift stay and the City filed its response in opposition on September 3, 2014. 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 ATU's motion to condition the order lifting the stay of the third-party claim. October 27, 2014 Court denied First Transit's motion to lift the stay. January 20, 2015 The Colorado Supreme Court denies First Transit's Petition for Writ of *Certiorari*. April 26, 2017 First Transit files motion to amend its third party complaint to assert subrogation claim and to lift stay on proceedings re third party complaint, to which the City responds in opposition on May 17, 2017, and First Transit replies in support on May 26, 2017. June 20, 2017 The Court denies the motion to lift the stay and denies the motion to amend the third party complaint. July 5, 2017 First Transit files a motion to reconsider the Court's order re lift the stay and amend complaint. July 12, 2017 ATU joins First Transit in the motion to reconsider. City files response brief in opposition on July 26, 2017 and First Transit files reply on August 2, 2017. August 7, 2017 Court denies First Transit's motion to reconsider. ATU and First Transit were ordered to proceed to arbitration without further delay. December 20, 2018 Joint motion to dismiss action as to Plaintiff's claims against First Transit, Inc. First Transit files Notice of Settlement, unopposed motion to lift stay as to third party complaint and opposed motion to amend its third party complaint to assert subrogation claim. December 20, 2018 Court files order granting motion to dismiss. January 11, 2019 City files response brief in opposition to First Transit's motion to amend its third party complaint; City files motion for judgment on the pleadings; City files response brief to motion to dismiss action as to Plaintiff; and City files response brief to motion to lift stay as to the third party complaint. January 17, 2019 First Transit files reply in support of its motion to amend third party complaint. January 31, 2019 First Transit files response to City's motion for judgment on the pleadings. February 8, 2019 City files reply brief in support of motion for judgment on the pleadings. February 14, 2019 City files response brief in Opposition to ATU's motion to join First Transit's motion to lift stay and amend third-party complaint to adopt subrogation claim. February 19, 2019 Court grants

dismissal between ATU and First Transit. February 22, 2019 Court grants motion to lift stay and grants First Transit's motion to amend its third party complaint. February 25, 2019 Court denies City's motion for judgment on the pleadings. March 8, 2019 City Defendants files answer and defenses. August 30, 2019 City files subpoena to produce. September 13, 2019 Motion of non-party Amalgamated Transit Union to quash or modify third party subpoena and to obtain a protective order. City files opposition and Amalgamated replies. September 26, 2019 City files response brief in opposition to motion of non-party Amalgamated. Court grants in part and denies in part Amalgamated motion on October 21, 2019. November 4, 2019 First Transit files motion for summary judgment. City files motion for summary judgment. November 18, 2019 First Transit responds to City's motion to quash and for protective order. November 25, 2019 City files reply brief. November 27, 2019 City files motion to compel. December 2, 2019 City files reply brief in opposition to ATU's motion to stay discovery and the City's motion for summary judgment. December 4, 2019 Court denies City's motion to reconsider subpoena to ATU. December 5, 2019 Court denies City's motion to quash deposition. December 9, 2019 City files response to First Transit motion for summary judgment or determination of law. December 9, 2019 City files motion to strike affidavit of Judge Ann Frick. January 7, 2020 Court grants City's motion for summary judgment and denies First Transit's motion for summary judgment. February 21, 2020 First Transit files notice of appeal. March 6, 2020 City files appellee's notice of cross-appeal. May 7, 2020 First Transit's opening brief is due June 18, 2020. June 18, 2020 First Transit files opening brief. July 23, 2020 City files answer brief. August 18, 2020 Plaintiff files motion for enlargement of time. August 19, 2020 Court grants motion for enlargement of time to file reply brief. Reply brief due September 14, 2020. September 14, 2020 Plaintiff files appellant's answer-reply brief. October 9, 2020 appellant request oral argument. May 13, 2021 Court files notice of oral argument. Oral argument is set for July 20, 2021. July 9, 2021 Plaintiff files motion to postpone oral argument. July 14, 2021 Court grants motion to postpone oral argument. July 14, 2021 Court files notice of oral argument. Oral argument is set for October 5, 2021. October 21, 2021 Court of Appeals issues opinion affirming judgment. November 4, 2021 First Transit files Petition for Rehearing. November 18, 2021 Court of Appeals issues order denying petition for rehearing. December 16, 2021 Plaintiff files petition for writ of certiorari.  
(Doherty/ Eric V. Hall)

## UTILITIES

### Myers & Sons Construction, L.P. v. City of Colorado Springs and Colorado Springs Utilities

El Paso County District Court Case No. 20CV31791

CLAIM: Plaintiff alleges defendants breached the contract during the COVID pandemic.

STATUS: October 5, 2020 City received summons and complaint. October 8, 2020 Defendants file waiver and acceptance of service. October 26, 2020 Defendants file unopposed motion for extension of time to file responsive pleading. October 27, 2020 Court grants motion for extension of time. November 9, 2020 Defendants file motion to dismiss. November 30, 2020 Plaintiff files response to motion to dismiss. December 7, 2020 Defendants file reply to motion to dismiss. December 29, 2020 Court denies motion to dismiss. January 12, 2021 City files answer. February 25, 2021 parties file notice of status conference. March 10, 2021 Plaintiff files proposed stipulated protective order. March 10, 2021 City files motion to approve stipulated protection order. March 12, 2021 Court grants stipulated protective order and motion to approve stipulated protection order. March 22, 2021 Plaintiff files motion for approval of pro hac vice admission.

March 29, 2021 Court grants motion for approval of pro hac vice admission. March 30, 2021 Plaintiff files motion to consolidate actions. April 9, 2021 Plaintiff files motion to compel disclosure of EADOC project management system. April 27, 2021 City files motion for leave to file amended answer and counterclaim. April 28, 2021 Court grants motion for leave to file amended answer and counter claim. April 30, 2021 Court grants with amendments motion to consolidate actions. April 30, 2021 City files response to motion to compel disclosure of EADOC project management system. May 7, 2021 Plaintiff files answer and affirmative defenses. May 7, 2021 Defendant Travelers insurance files answer. May 7, 2021 Plaintiff files reply to motion to compel. May 18, 2021 Plaintiffs response to defendant's motion for leave to file amended answer. May 19, 2021 Court denies motion to compel disclosure of EADOC project management system. May 25, 2021 Defendants file reply to Plaintiff's response in opposition to motion for leave to file amended answer and counterclaims. June 11, 2021 Plaintiff files motion to approve stipulation to protective order and ESI and paper document production protocol. June 14, 2021 Court grants motion to approve stipulation to protective order and ESI and paper document production protocol. July 29, 2021 Plaintiff files notice of trial setting, status conference and trial readiness conference. August 13, 2021 Plaintiff files motion to compel. August 16, 2021 Court denies Plaintiff's motion to compel. September 3, 2021 City files response to motion to compel. September 8, 2021 City files request to rule on April 27, 2021 motion for leave to file amended answer and counter claim. September 9, 2021 Court grants City's motion for leave to file amended answer and counter claim. September 9, 2021 Plaintiff files reply to motion to compel. September 13, 2021 Plaintiff files notice of settlement and dismissal without prejudice of Weifield Group Contracting, Inc. September 13, 2021 Court grants Plaintiff's notice of settlement and dismissal without prejudice of Weifield Group Contracting, Inc. September 22, 2021 Plaintiff files motion for enlargement of time to file response to City's counterclaims. September 23, 2021 Court grants Plaintiff's motion for enlargement of time to file response to City's counterclaims. September 24, 2021 Court denies Plaintiff's motion to compel. October 7, 2021 Plaintiff files answer to counterclaim. November 1, 2021 City files motion for enlargement of time for response to request for production of documents. November 2, 2021 Court grants City's motion for enlargement of time for response to request for production of documents. January 21, 2022 Defendant's file unopposed motion for extension of time for response to second discovery requests. January 21, 2022 Court grants unopposed motion for extension of time for response to second discovery requests. March 9, 2022 **Plaintiff files motion for out of state counsel. March 10, 2022 Court grants motion for out of state counsel.**

(Sherman & Howard; Burgess)

## **ADMINISTRATIVE SECTION**

### **NEW MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2022-00209  
March 19, 2022, Claimant brings charge of alleged discrimination and retaliation under the Americans with Disabilities Act (ADA). March 21, 2022, amended charge filed. Mediation held on May 2, 2022. Settlement agreement executed May 16, 2022. Mediation agreement executed May 17, 2022  
(Rose)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2022-02245  
April 15, 2022, Claimant brings charge of alleged employment discrimination under Title VII of the Civil Rights Act. Response to Charge is due May 31, 2022.  
(McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 32A-2022-00307  
April 7, 2022, Claimant brings charge of alleged gender discrimination and retaliation under Title VII of the Civil Rights Act. Mediation pending.  
(McCall)

(OC)

EMPLOYEE v. CITY OF COLORADO SPRINGS, Charge Number CCRD  
E2200015655/EEOC 32A-2022-00518

April 25, 2022 Claimant brings charge of alleged gender, sexual orientation, and disability discrimination and retaliation under Title VII of the Civil Rights Act and the Colorado Anti-Discrimination Act. Response to Charge and Request for Information due June 8, 2022.  
(Lessig/Fredrickson/Fisher Phillips)

### **CURRENT MATTERS**

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number EEOC 541-2021-00684  
January 8, 2020, Claimant brings charge of alleged retaliation under the Americans with Disabilities Act (ADA) and gender and retaliation discrimination under Title VII of the Civil Rights Act. Response to Charge is due February 26, 2021. City extension request granted February 19, 2021. Response to Charge due March 26, 2021. Response to Charge filed March 19, 2021. Pending decision.  
(McCall)

EMPLOYEE V. CITY OF COLORADO SPRINGS, Charge Number CCRD E2200013269 /  
EEOC 32A-2022-00123

December 7, 2021, Claimant brings charge of alleged disability discrimination and retaliation under the Americans with Disabilities Act (ADA) and race, gender, and sexual orientation discrimination and retaliation under Title VII of the Civil Rights Act. Response to Charge and Request for Information was submitted on January 18, 2022. Pending decision.  
(McCall)

## **DISPOSED MATTERS**



**UTILITIES: Water Court Cases**

**Total Active Application Cases:**                      **10 (7 Diligence cases)**

**Application Cases before Water Referee:**                      **10**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
15CW3019	Blue River (Diligence)
18CW3041	Homestake / Blue River (Diligence)
20CW3024	Homestake Conditional Rights (Diligence)
20CW3048	Fountain Creek Recovery Project (Diligence)
22CW3002	Williams Creek/Pueblo Reservoir Exchange (Diligence)
22CW3006	Arkansas Basin Exchange (Diligence)
22CW3023	ATM Exchange (Diligence)

**Application Cases before Water Judge:**                      **3**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
13CW3077	Green Mountain Reservoir
21CW3015	LAWMA Share Exchange
19CW3053	Augmentation Plan – Ponds

**Total Objector Cases:**                      **21**

**Stipulated:**                      **6**  
**Active:**                      **15**

**Active before Water Referee:**                      **9**

**Active before Water Judge:**                      **6**

<b><u>Number</u></b>	<b><u>Case Name</u></b>
19CW3036	Lower Arkansas Water Management Association
19CW3081	City of Fountain
21CW3044	Triview Metropolitan District
21CW3058	Triview Metropolitan District
21CW3072	Catlin Augmentation Association
21CW3082	Triview Metropolitan District

**WORKERS COMPENSATION MATTERS OUTSIDE COUNSEL**

**Active cases:**

Municipal – 69  
 Utilities – 7  
 Memorial - 0

**Subrogation cases handled by outside counsel:**

Municipal – 0  
 Utilities – 0

**Subrogation cases handled by City Attorney’s Office:**

Municipal – 0  
 Utilities – 0

**CRIMINAL PROSECUTIONS SECTION**

(MUNICIPAL COURT)

	<b>JAN</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>
Cases Docketed for Trial by Court	50	25	48	38
Cases tried	13	4	10	9
Cases handled without trial	37	20	38	29
Cases Docketed for Trial by Jury	13	6	6	17
Cases tried	0	0	0	1
Cases handled without trial	13	6	6	16
Cases Docketed and Prepped for Pretrial	919	816	1150	885
Traffic Cases Docketed for Instant Pre-Trial Conference	435	806	1000	824
Remote Dispositions	55	63	93	63
Email Dispositions	43	51	71	41
Attorney Remote Dispositions	12	12	22	22
Jail Docket	873	742	981	562
Administrative Hearings	2	0	1	0
Cases Referred to Outreach Court for Services	0	5	6	7
Discovery Requests Processed	116	125	236	208
Appellate Cases Pending	5	5	4	4
 TOTAL MATTERS:	 2468	 2593	 3525	 2601

**Due to changes and updates in the process and procedures in Municipal Court, the City Attorney’s office has updated the categories of statistics kept and reported by the Prosecution Division.**