

THE HIGH COURT

2012 No. 4 FTE

IN THE MATTER OF THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856 AND
IN THE MATTER OF THE CIVIL PROCEEDINGS NOW PENDING BEFORE THE
COLORADO DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER

CASE NO. 2008CV10169 (CONSOLIDATED WITH NO. 09CV8277)

BETWEEN:

JEAN CORNEC

Plaintiff

-and-

SUSAN MORRICE

Defendant/Counterclaimant

-and-

JEAN CORNEC, MAIRE LALOR, JOHN VINCENT FENNELLY, AND
SHEILA McCAFFREY

Additional Counterclaimant/
Third Party Plaintiff

-and-

MAIRE LALOR

Additional Counterclaim and
Third Party Defendants

-and-

SUSAN MORRICE, and JOSHUA STEWART

Additional Counterclaim and
Third Party Defendants

SECOND SUPPLEMENTAL AFFIDAVIT OF KELLIE NELSON FETTER

I, **KELLIE NELSON FETTER** of **SHERMAN & HOWARD**, Denver, Colorado, aged 18 years and upwards **MAKE OATH AND SAY** as follows: -

1. I am informed that two procedural issues arose in the High Court on September 7, 2009: (1) Counsel for Mr. Garde contended the Letters Rogatory were not properly signed and stamped by the Denver Court, and (2) Counsel for Mr. Garde contended the Letters Rogatory

ought to have emanated directly from the Colorado Court to the Irish Court. The purpose of this Affidavit is to respond to these narrow procedural issues under Colorado law. My prior Affidavits are incorporated herein by reference.

The Letters Rogatory Were Properly Signed and Stamped.

2. The Request for International Judicial Assistance (Letters Rogatory) was properly signed and stamped by Judge Edward D Bronfin of the District Court for the City and County of Denver, Colorado, USA. I beg to refer to a copy of the Letters Rogatory upon which marked with the letters **S&H1** I have signed my name prior to the swearing hereof.

3. The first page of the Letters Rogatory contains the seal of the State of Colorado in the upper left-hand corner. It also contains the scanned signature of District Court Judge Edward D Bronfin. The last page of the Letters Rogatory also contains a block stating "This document constitutes a ruling of the court and should be treated as such," and is again marked with an electronic signature ("/s/ Judge Edward D Bronfin").

4. This form of seal and signature is not only proper, but is required under Colorado law. Colorado Rule of Civil Procedure 121 § 1-26 addresses the requirements of Colorado's electronic filing and service system. I beg to refer to a copy of Rule 121 § 1-26, C.R.C.P., upon which marked with the letters **S&H2** I have signed my name prior to the swearing hereof.

5. Subsection 9 of that rule provides "An E-signature IS A signature" for purposes of the Colorado Rules (capitalization in original). An Electronic Signature is defined as "An Electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-filed or E-served document." Rule 121 § 1-26(1)(f)(I), C.R.C.P. The rule further defines a Scanned Signature as "A graphic image of an handwritten signature." Rule 121 § 1-26(1)(f)(II), C.R.C.P. The Letters Rogatory contain both the Scanned Signature and an E-Signature of Judge Edward D Bronfin as defined by this Rule.

6. Further, electronic court orders are required in this case. "Beginning January 1, 2006, courts **shall** distribute orders, notices and other court entries using the E-system in cases where E-Filings were received from any party." Rule 121 § 1-26(11), C.R.C.P. (emphasis added). All of the parties to the Denver case have used E-filings as required under Rule 121 § 1-26(13), C.R.C.P.

7. Thus, the signature and seal on the Letters Rogatory complies with Colorado law for the execution of an order from the court.

The Letters Rogatory Were Properly Submitted through Representatives of the Parties.

8. The Colorado Rules do not require the Court to transmit Letters Rogatory directly to the foreign court, but only provide the requirements for the Colorado Court to issue letters rogatory. I beg to refer to a copy of Rule 28(c), C.R.C.P., upon which marked with the letters **S&H3** I have signed my name prior to the swearing hereof. Ms. Morrice, through her attorneys, has met all the requirements under the Colorado Rule.

9. Colorado Rule of Civil Procedure 28(c) provides, in relevant part:

A commission or letters rogatory shall be issued when necessary, on application and notice, and on terms that are just and appropriate.... Letters rogatory may be addressed "to the appropriate authority in (here name the appropriate place)." The clerk shall issue a commission or letters rogatory in the form prescribed by the jurisdiction where the deposition is to be taken, such form to be prepared by the party seeking the deposition.

10. Ms. Morrice, through her attorneys, has satisfied the requirements set forth in this rule by preparing the letters rogatory in the form prescribed by the Republic of Ireland and demonstrating to the Colorado Court that the letters rogatory were necessary through application and notice. This is demonstrated by the fact that the Colorado Court did issue letters rogatory in the form prepared and provided it to the parties in Colorado to transmit to the Irish Court.

11. It is our ordinary practice to have attorneys for the parties transmit letters rogatory to the foreign court once the letters rogatory have been issued by the Colorado Court.

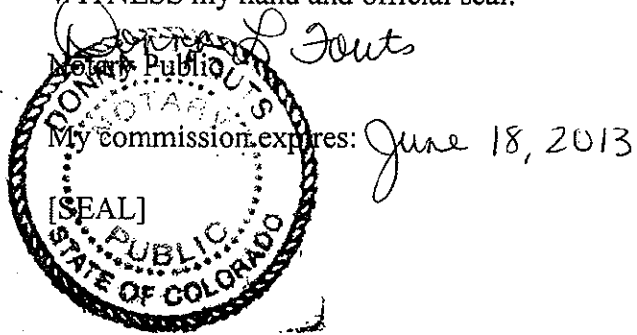


Kellie Nelson Fetter

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STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this 9th day of September 2012 by Kellie Nelson Fetter.
WITNESS my hand and official seal.



This Affidavit is filed by Johnsons law firm, 4 Harbourmaster Place, IFSC, Dublin 1, Solicitors
for the Defendant/Counterclaimant on this day of 2012.

THE HIGH COURT

2012 No. 4 FTE

IN THE MATTER OF THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856 AND
IN THE MATTER OF THE CIVIL PROCEEDINGS NOW PENDING BEFORE THE
UNITED STATES DISTRICT COURT OF DENVER, COLORADO

CASE NO. 2008CV10169 (CONSOLIDATED WITH NO. 09CV8277)

BETWEEN:

JEAN CORNEC

Plaintiff

-and-

SUSAN MORRICE

Defendant/Counterclaimant

-and-

JEAN CORNEC, MAIRE LALOR, JOHN VINCENT FENNELLY, AND
SHEILA McCaffrey

Additional Counterclaimant/
Third Party Plaintiff

-and-

MAIRE LALOR


Additional Counterclaim and
Third Party Defendants

-and-

SUSAN MORRICE, and JOSHUA STEWART

Additional Counterclaim and
Third Party Defendants

EXHIBIT S&H1


Kellie Nelson Fetter

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this 9th day of September 2012 by Kellie Nelson Fetter.

WITNESS my hand and official seal.

Donna L. Fouts
Notary Public

My commission expires: June 18, 2013





GRANTED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Dated: May 31, 2012

Edward D. Bronfin
District Court Judge

FILED Document
DATE OF ORDER INDICATED ON ATTACHMENT
CO Denver County District Court 2nd JD
Filing Date: May 31 2012 10:01AM MDT
Filing ID: 44554669
Review Clerk: Tina Brown

DISTRICT COURT,
CITY & COUNTY OF DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202

Plaintiff:

JEAN CORNEC

Defendant/Counterclaimant:

SUSAN MORRICE

Counterclaim-Defendants:

JÈAN CORNEC, et al.

Additional Counterclaimant/Third-Party Plaintiff:

MAIRE LALOR

Additional Counterclaim and Third-Party Defendants:

SUSAN MORRICE, TONY QUINN, JOSHUA STEWART and INTERNATIONAL NATURAL ENERGY, LLC (as a nominal defendant)

Consolidated with

Plaintiff:

INTERNATIONAL NATURAL ENERGY, LLC

Defendants:

JEAN CORNEC, et al.

▲ COURT USE ONLY ▲

Case No.: 2008CV10169
(Consolidated with No. 09CV8277)

Division: 203

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
(LETTERS ROGATORY)**

The Colorado District Court for the City and County of Denver presents its compliments to the Appropriate Judicial Authority of the Republic of Ireland, and requests international judicial assistance to obtain evidence to be used in a civil trial proceeding before this Court in the above-captioned matter. A trial on this matter is scheduled at present on January 21 through February 6, 2013 in Denver, Colorado, USA.

This Court requests the assistance described herein as necessary in the interests of justice. The Assistance requested is that the Appropriate Judicial Authority of the Republic of Ireland compel the appearance of the below named individual to give evidence and produce documents:

Name of Witness: Mike Garde
Nationality of Witness: Irish
Address of Witness: c/o Dialogue Ireland
7/9 Lower Abbey Street,
Dublin 1
Ireland

Description of Evidence to be Produced:

1. Through this request, defendant, Ms. Morrice seeks to obtain preservation deposition testimony from a witness who will be unavailable at trial as outside of the Colorado District Court's subpoena power.
2. The testimony sought is to be used as evidence in the trial since the defendant will be unable to compel attendance of this witness at trial.
3. In order to obtain this evidence, Ms. Morrice requests the opportunity to depose Mr. Garde on the following questions, including reasonable follow-up questions:

Meetings in November 2008

- a. Did you meet with Katrina Skinner in or about November 2008?
- b. If so, what was the date and time of the meeting?
- c. Where did you meet with Ms. Skinner?
- d. What was the purpose of the meeting?
- e. Who was present at the meeting?
- f. Did Ms. Skinner provide any information to you during the meeting? If so, describe the information provided by Ms. Skinner.
- g. Did you provide Ms. Skinner with any information during the meeting? If so, describe the information you provided.
- h. Did you take notes or otherwise record your meeting with Ms. Skinner?
- i. Did Ms. Skinner take notes or otherwise record your meeting?

Communications

- a. Have you received communications from Jean Cornec?
- b. Have you received communications from Katrina Skinner?
- c. Have you received communications from Maire Lalor?
- d. Have you received communications from Javey Fennelly?
- e. Have you received communications from Sheila McCaffrey?

If you answered affirmatively to any of the questions (a) - (e) above,

- f. What was the date and time of each communication?
- g. What was the medium or method of each communication?
- h. Describe the content of each communication.
- i. Is there any record of such communication, including but not limited to email, and notes?

Sources

- a. Has Jean Cornec ever served as a source for a story you wrote?
- b. Has Katrina Skinner ever served as a source for a story you wrote?
- c. Has Maire Lalor ever served as a source for a story you wrote?
- d. Has Javey Fennelly ever served as a source for a story you wrote?
- e. Has Sheila McCaffrey ever served as a source for a story you wrote?

If you answered affirmatively to any of the question (a) - (e) above,

- f. When did each person serve as a source?
- g. Identify the story for which they served as a source.
- h. What information provided by that person was used in the story?
- i. Did that person provide any additional information not used in the story?

Negative Remarks

- a. Since August 11, 2008, have you received any communication from Jean Cornec containing negative or harmful remarks about Susan Morrice, INE, the

INE Board of Directors, any INE director, including Tony Quinn, or any entity affiliated with these people and entities?

b. Since August 11, 2008, have you received any communication from Katrina Skinner containing negative or harmful remarks about Susan Morrice, INE, the INE Board of Directors, any INE director, including Tony Quinn, or any entity affiliated with these people and entities?

c. Since August 11, 2008, have you received any communication from Maire Lalor containing negative or harmful remarks about Susan Morrice, INE, the INE Board of Directors, any INE director, including Tony Quinn, or any entity affiliated with these people and entities?

d. Since August 11, 2008, have you received any communication from Javey Fennelly containing negative or harmful remarks about Susan Morrice, INE, the INE Board of Directors, any INE director, including Tony Quinn, or any entity affiliated with these people and entities?

e. Since August 11, 2008, have you received any communication from Sheila McCaffrey containing negative or harmful remarks about Susan Morrice, INE, the INE Board of Directors, any INE director, including Tony Quinn, or any entity affiliated with these people and entities?

If you answered affirmatively to any of the questions (a)-(e) above,

f. What is the date of each communication?

g. What is the medium of each communication?

h. To whom is each communication addressed?

i. Describe the content of each communication.

j. Describe your response to each communication.

4. Ms. Morrice will also propound the following request for documents:

a. Please produce documents, including e-mails containing any communications described in the questions above.

5. As it is necessary to have the deposition prepared according to the Colorado Rules of Civil Procedure the deposition will be transcribed and videotaped in accordance with the language used by reporters in Colorado as follows:

a. Do you solemnly swear or affirm, under penalty of law, to state the whole truth and nothing but the truth to the matters set before you in your deposition?

Procedural Requests:

6. The following procedure is requested to the extent it is not incompatible with the internal law of the Republic of Ireland and is not impossible of performance by reason of Ireland's internal practice and procedure or by reason of practical difficulties:

a. The testimony shall be taken upon oral examination, which shall be transcribed verbatim, as provided in Colorado Rules of Civil Procedure, Rule 30.

b. Rule 28 (c), C.R.C.P., allows the Colorado Court to issue Letters Rogatory to obtain the deposition of a person outside of Colorado, such as the present Request. One requirement of that rule is that the this letter of request inform the officer that the original sealed deposition shall be filed by the officer transcribing the deposition as provided in Rule 30(f)(1), C.R.C.P. Rule 28(d), C.R.C.P.

c. Rule 30(f)(1), C.R.C.P. requires:

The officer shall certify that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. This certificate shall be set forth in writing and accompany the record of the deposition and shall be reduced to video tape and writing. Unless otherwise ordered by the court, the officer shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of Mike Garde" and shall promptly transmit it to the attorney who arranged for the transcript or recording. The receiving attorney shall store the deposition under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that: if the person producing the materials desires to retain the originals, the person may:

1) Offer copies be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties the fair opportunity to verify the copies by comparison with the originals, or

2) Offer the originals to be marked for identification, after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

7. Lastly, we request that you permit counsel, an attorney licensed to practice law in the Republic of Ireland, as a duly appointed commissioner of this Court for that purpose.

Request for Notification:

8. Please inform this Court of the time when, and the place where, the proceedings will take place, in order that this Court may inform all parties of record, and their representatives, and so that they may be present.

Reciprocity and Reimbursement:

9. This Court does not request that any judicial authority, other than the representatives of the parties be present at the execution of the Letter of Request.

10. This Court is willing to provide similar judicial assistance to judicial authorities in the Republic of Ireland.

11. Counsel requesting the deposition have indicated they are willing to reimburse the Republic of Ireland for costs incurred in executing this request.

Dated:

SIGNATURE AND SEAL OF
THE REQUESTING
AUTHORITY

This document constitutes a ruling of the court and should be treated as such.

Court: CO Denver County District Court 2nd JD

Judge: Edward D Bronfin

File & Serve

Transaction ID: 44534513

Current Date: May 31, 2012

Case Number: 2008CV10169

Case Name: CORNEC, JEAN et al vs. MORRICE, SUSAN et al

/s/ Judge Edward D Bronfin

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EXHIBIT S&H2



Kellie Nelson Fetter

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

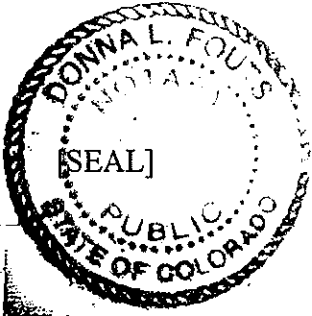
Subscribed and sworn to before me this 9th day of September 2012 by Kellie Nelson Fetter.

WITNESS my hand and official seal.

Donna L. Fouts

Notary Public

My commission expires: June 18, 2013



Colorado Court Rules

COLORADO RULES OF CIVIL PROCEDURE

Chapter 17A. Practice Standards and Local Court Rules

Rule 121. Local Rules - Statewide Practice Standards

Local Rules - Statewide Practice Standards

Includes all rule changes through 2012(12)

§ 1-26. ELECTRONIC FILING AND SERVICE SYSTEM

1. Definitions:

(a)

Document: A pleading, motion, writing or other paper filed or served under the E-System.

(b)

E-Filing/Service System: The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(c)

Electronic Filing: Electronic filing ("E-Filing") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(d)

Electronic Service: Electronic service ("E-Service") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.

(e)

E-System Provider: The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(f)

Signatures:

(l) **Electronic Signature:** An Electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-filed or E-served document.

(II) **Scanned Signature:** A graphic image of a handwritten signature.

2. Types of Cases Applicable: E-Filing and E-Service may be used for certain cases filed in the courts of Colorado as the service becomes available. The availability of the E-System will be determined by the Colorado Supreme Court and announced through its web site <http://www.courts.state.co.us/supct/supct.htm> and through published directives to the clerks of the affected court systems. E-Filing and E-Service may be mandated pursuant to Subsection 13 of this Practice Standard 1-26.

3. To Whom Applicable:

(a)

Attorneys licensed to practice law in Colorado may register to use the E-System. Any attorney so registered may enter an appearance pursuant to Rule 121, Section 1-1, through E-Filing. In districts where E-Filing is mandated pursuant to Subsection 13 of this Practice Standard 1-26, attorneys must register and use the E-System.

(b)

Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

4. Commencement of Action-Service of Summons:

Cases may be commenced under C.R.C.P. 3 by E-Filing the initial pleading. Service of a summons shall be made in accordance with C.R.C.P. 4. The serving party or the party's attorney shall enter into the E-system the best known address for each served party as that party is served.

5. E-Filing-Date and Time of Filing:

Documents filed in cases on the E-System may be filed under C.R.C.P. 5 through an E-Filing. A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

6. E-Service-When Required - Date and Time of Service:

Documents submitted to the court through E-Filing shall be served under C.R.C.P. 5 by E-Service. Parties shall keep their address and contact information updated in the E-system. A filing party shall enter or confirm the served party's last known address in the E-system. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

7. Filing Party to Maintain the Signed Copy-Paper Document Not to Be Filed-Duration of Maintaining of Document: A printed or printable copy of an E-Filed or

E-Served document with original, electronic, or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals. For domestic relations decrees, separation agreements and parenting plans, original signature pages bearing the attorneys', parties', and notaries' signatures must be scanned and E-Filed. For probate of a will, the original must be lodged with the court.

8. Documents Requiring E-Filed Signatures: For E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be affixed electronically or documents with signatures obtained on a paper form scanned.

9. C.R.C.P. 11 Compliance: An E-signature IS A signature for the purposes of C.R.C.P. 11.

10. Documents under Seal: A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

11. Transmitting of Orders, Notices and Other Court Entries: Beginning January 1, 2006, courts shall distribute orders, notices, and other court entries using the E-System in cases where E-Filings were received from any party.

12. Form of E-Filed Documents: C.R.C.P. 10 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

13. E-Filing May be Mandated: With the permission of the Chief Justice, a chief judge may mandate E-Filing within a county or judicial district for specific case classes or types of cases. A judicial officer may mandate E-Filing and E-Service in that judicial officer's division for specific cases, for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

14. Relief in the Event of Technical Difficulties:

(a)

Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (1) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (2) a failure of the E-System Provider to process the E-Filing when received, or (3) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(b)

Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

15. Form of Electronic Documents

(a)

Electronic document format, size and density: Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01.

(b)

Multiple Documents: Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(c)

Proposed Orders: Proposed orders shall be E-Filed in editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the Court Clerk's office and must be resubmitted.

History. Entire section and committee comment added and effective March 7, 2000; entire section and committee comment amended and effective April 17, 2003; entire section and committee comment repealed and readopted October 20, 2005, effective January 1, 2006; 6. amended December 14, 2011, effective January 1, 2012; amended June 21, 2012, effective immediately.

THE HIGH COURT

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EXHIBIT S&H3



Kellie Nelson Fetter

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this 9th day of September 2012 by Kellie Nelson Fetter.

WITNESS my hand and official seal.

Donna L. Fouts

Notary Public

My commission expires: June 18, 2013



Colorado Court Rules

COLORADO RULES OF CIVIL PROCEDURE

Chapter 4. Disclosure and Discovery

Includes all rule changes through 2012(12)

Rule 28. Persons Before Whom Depositions May Be Taken

(a)

Outside the State of Colorado. Depositions outside the State of Colorado shall be taken only upon proof that notice to take deposition has been given as provided in these rules. The deposition shall be taken before an officer authorized to administer oaths by the laws of this state, the United States or the place where the examination is to be held, or before a person appointed by the court in which the action is pending. A person so appointed has the power to administer oaths and take testimony.

(b)

Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is financially interested in the action.

(c)

Commission or Letters Rogatory. A commission or letters rogatory shall be issued when necessary, on application and notice, and on terms that are just and appropriate. It is not a requisite to the issuance of a commission or letters rogatory that the taking of the deposition in any other manner is impracticable or inconvenient. Both a commission and letters rogatory may be issued in proper cases. Officers may be designated in the commission either by name or descriptive title. Letters rogatory may be addressed "to the appropriate authority in (here name the appropriate place)." The clerk shall issue a commission or letters rogatory in the form prescribed by the jurisdiction where the deposition is to be taken, such form to be prepared by the party seeking the deposition. The commission or letters rogatory shall inform the officer that the original sealed deposition shall be filed according to subsection (d) of this rule. Any error in the form or in the commission or letters rogatory is waived unless an objection is filed and served before the time fixed in the notice.

(d)

Filing of the Deposition. The officer transcribing the deposition shall file the original sealed deposition pursuant to C.R.C.P. 30(f)(1).

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 23 Am. Jur.2d, Depositions and Discovery, § 80.

C.J.S. See 26B C.J.S., Depositions, §§ 21, 24, 34; 27 C.J.S., Discovery, §§ 38, 39; 35A C.J.S., Federal Civil Procedure, § 634.

Law reviews. For article, "Notes on Proposed Amendments to Colorado Rules of Civil Procedure", see 27 Dicta 165 (1950). For article, "Amendments to the Colorado Rules of Civil Procedure", see 28 Dicta 242 (1951). For article, "Depositions and Discovery, Rules 26 to 37", see 28 Dicta 375 (1951). For article, "Depositions and Discovery: Rules 26-37", see 23 Rocky Mt. L. Rev. 562 (1951). For article, "Plaintiff's Advantageous Use of Discovery, Pre-Trial and Summary Judgment", see 40 Den. L. Ctr. J. 192 (1963). For article, "Taking Evidence Abroad for Use in Litigation in Colorado", see 14 Colo. Law. 523 (1985). For article, "Securing the Attendance of a Witness at a Deposition", see 15 Colo. Law. 2000 (1986). For article, "Alternative Depositions: Practice and Procedure", see 19 Colo. Law. 57 (1990).

C.R.C.P. 26 to 37 must be construed together along with the requirement that plaintiff establish a prima facie case for punitive damages, as a condition precedent to the plaintiff's right to discovery of defendant's financial information. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

Applied in *Sanchez v. District Court*, 624 P.2d 1314 (Colo. 1981); *Ricci v. Davis*, 627 P.2d 1111 (Colo. 1981).

II. OUTSIDE OF COLORADO.

Annotator's note. Since section (a) of this rule is similar to § 384 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

There is no way by which depositions of witnesses living out of the state can be taken except on due observance of the statutory course; any deviation from the statutory provisions on this subject is fatal, and the use of depositions erroneously taken constitutes an error for which a cause has to be reversed. *Argentine Falls Silver Mining Co. v. Molson*, 12 Colo. 405, 21 P. 190

(1889); Gibbs v. Gibbs, 6 Colo. App. 368, 40 P. 781 (1895).

A Colorado court does not have jurisdiction to compel a witness residing in a foreign state to appear in the foreign jurisdiction and give testimony by deposition and to furnish his personal records at said hearing by virtue of a dedimus issued in Colorado and a subpoena duces tecum issued in the foreign state where the witness is not a party to the suit. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957).

This rule which provides for taking deposition outside of Colorado of nonresidents not parties to an action in Colorado or served within Colorado is subject to implied limitations of mutual compact or uniform act. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957); Minnesota ex rel. Minnesota Att'y Gen. v. District Court, 155 Colo. 521, 395 P.2d 601 (1964).

No state court or government has authority beyond its own borders, each state being sovereign as to its own territory and those residing therein. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957); Minnesota ex rel. Minnesota Att'y Gen. v. District Court, 155 Colo. 521, 395 P.2d 601 (1964).

Such recognition as is given Colorado laws or court orders by other states must be based solely upon full faith and credit, comity, contract due to uniform acts, or compact. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957); Minnesota ex rel. Minnesota Att'y Gen. v. District Court, 155 Colo. 521, 395 P.2d 601 (1964).

The matter of lack of jurisdiction cannot be waived, and this defense may be raised at any stage of the proceedings. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957).

Provisions for taking depositions outside the state under this rule do not apply to criminal proceedings. Bresnahan v. District Court, 164 Colo. 263, 434 P.2d 419 (1967).

III. DISQUALIFICATION FOR INTEREST.

Law reviews. For article, "The Federal Rules from the Standpoint of the Colorado Code", see 17 Dicta 170 (1940).

Cross References:

For persons authorized to administer oaths, see § 24-12-103 ; for objections to admissibility, see C.R.C.P. 32(b).