

*ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JUNE 28, 2010*

"Slip opinions" are the opinions delivered by the Supreme Court Justices and are subject to modification, rehearing, withdrawal, or clerical corrections. Modifications to previously posted opinions will be linked to the case number in the petition for rehearing section the day the changes are announced.

Click on the case number to view the opinion in pdf format.

OPINIONS

<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Appeal from the District Court Water Division 1, 06CW104 Honorable Roger A. Klein, Judge</p>	<p>Case No. 09SA158</p>
<p>Concerning the Application for Water Rights of the City of Aurora in Adams, Arapahoe, Douglas and Weld Counties</p> <p>Applicant-Appellee:</p> <p>City of Aurora, acting by and through its utility enterprise,</p> <p>v.</p> <p>Opposer-Appellant:</p> <p>Northern Colorado Water Conservancy District,</p> <p>and</p> <p>Opposer-Appellant:</p> <p>East Cherry Creek Valley Water and Sanitation District,</p> <p>Opposers-Appellees:</p> <p>Adams County Board of County Commissioners; Peter L. Baurer; Cynthia S. Baurer; Centennial Water and Sanitation District; Central Colorado Water Conservancy District, the Ground Water Management Subdistrict; Well Augmentation Subdistrict of the Central Colorado Water Conservancy District; City of Boulder; City of Brighton; City of Englewood; City of</p>	

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Fort Lupton; City of Greeley, acting by and through its Water and Sewer Board; City of Thornton; City of Westminster; Denis B. Clanahan, Trustee of the Crabb Trust; Colorado River Water Conservation District; City and County of Denver, acting by and through its Board of Water Commissioners; Carl F. Eiberger, III; Farmers Reservoir and Irrigation District; Henrylynn Irrigation District; New Brantner Extension Ditch Company; Donald O. Peterson; Public Service Company of Colorado d/b/a Xcel Energy; South Adams County Water & Sanitation District; The Brighton Ditch Company; United Water and Sanitation District; and Wattenberg Improvement Association, Inc.;

Appellee Pursuant to C.A.R. 1(e):

James Hall, Division Engineer, Water Division 1.

JUDGMENT AFFIRMED
EN BANC

CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.
JUSTICE HOBBS does not participate.

SUPREME COURT, STATE OF COLORADO
101 West Colfax Avenue, Suite 800
Denver, Colorado 80202

[Case No. 10SA135](#)

Original Proceeding Pursuant to § 1-40-107(2)
C.R.S. (2009)
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #91

Petitioner:

Christopher Howes, Objector,

v.

Respondents:

Richard G. Brown and Garald L. Barber, Proponents,
and

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<p>Title Board:</p> <p>William A. Hobbs, Sharon Eubanks, and Geoff Blue.</p>
<p>ACTION REVERSED EN BANC</p> <p>JUSTICE HOBBS delivered the Opinion of the Court. JUSTICE COATS dissents. JUSTICE EID dissents, and JUSTICE RICE joins in the dissent.</p>

<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Original Proceeding Pursuant to C.A.R. 21 Park County District Court, Case No. 01CV81 Honorable Stephen A. Groome, Judge</p>	<p><u>Case No. 10SA34</u></p>
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<p>In Re:</p> <p>Cross-Claim Plaintiff:</p> <p>Jennifer Radil,</p> <p>v.</p> <p>Cross-Claim Defendant:</p> <p>National Union Fire Insurance Company of Pittsburg, PA.</p>

<p>RULE MADE ABSOLUTE IN PART AND DISCHARGED IN PART EN BANC</p> <p>JUSTICE HOBBS delivered the Opinion of the Court. JUSTICE EID concurs in part and dissents in part, and JUSTICE COATS joins in the concurrence and dissent.</p>

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<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 08CA720</p>	<p>Case No. 09SC377</p>
<p>Petitioner:</p> <p>Larry Foiles,</p> <p>v.</p> <p>Respondent:</p> <p>Deanna Whittman, in her capacity as Personal Representative for the Estate of Lily Whittman.</p>	
<p>JUDGMENT AFFIRMED EN BANC</p> <p>JUSTICE MARTINEZ delivered the Opinion of the Court.</p>	

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<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Appeal from the District Court Water Division No. 1, Case No. 05CW290 Honorable Roger Klein, Judge</p>	<p>Case No. 09SA178</p>
<p>Concerning the Application for Water Rights of the City and County of Broomfield,</p> <p>Applicant-Appellee:</p> <p>The City and County of Broomfield, a county and Colorado municipal corporation,</p> <p>v.</p> <p>Opposer-Appellant:</p> <p>The Farmers Reservoir and Irrigation Company, a Colorado corporation,</p> <p>and</p> <p>Opposers-Appellees:</p> <p>The Brighton Ditch Company, City of Aurora, Central Colorado Water Conservancy District, City of Englewood, City of Thornton, City of Westminster, East Cherry Creek Valley Water and Sanitation District, Public Service Company of Colorado, United Water and Sanitation District, Lupton Bottom Ditch Company, Lupton Meadows Ditch, New Coal Ridge Ditch Company, New Consolidated Lower Boulder Reservoir, Platte Valley Irrigation Company, South Adams Water & Sanitation District, and City of Boulder,</p> <p>and</p> <p>Appellee Pursuant to C.A.R. 1(e):</p> <p>James Hall, Division Engineer, Water Division 1.</p>	
<p>JUDGMENT AFFIRMED EN BANC</p>	
<p>JUSTICE BENDER delivered the Opinion of the Court.</p>	

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<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA1283</p>	<p>Case No. 09SC478</p>
<p>Petitioner:</p> <p>Jennifer Lee-Renee Wend,</p> <p>v.</p> <p>Respondent:</p> <p>The People of the State of Colorado.</p>	
<p>JUDGMENT REVERSED EN BANC</p> <p>JUSTICE RICE delivered the Opinion of the Court. JUSTICE EID dissents, and JUSTICE COATS joins in the dissent.</p>	

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<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Original Proceeding Pursuant to C.A.R. 21 Arapahoe County District Court, Case No. 09CV2525 Honorable Marilyn Leonard Antrim, Judge</p>	<p><u>Case No. 10SA58</u></p>
<p>In re:</p> <p>Plaintiff:</p> <p>The Foundation for Knowledge in Development, d/b/a Sensory Processing Disorder Foundation, a Colorado 501(c)(3) public charity,</p> <p>v.</p> <p>Defendants:</p> <p>Interactive Design Consultants, LLC, a Rhode Island corporation and Rick DiNobile.</p>	
<p>ORDER AFFIRMED EN BANC</p> <p>JUSTICE RICE delivered the Opinion of the Court.</p>	

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<p>SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p> <p>Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA995</p>	<p>Case No. 08SC784</p>
<p>Petitioners:</p> <p>Shirley S. Joondeph, Brian C. Joondeph, and CitiMortgage, Inc.,</p> <p>v.</p> <p>Respondent:</p> <p>Donald P. Hicks.</p>	
<p style="text-align:center">JUDGMENT AFFIRMED EN BANC</p> <p>JUSTICE EID delivered the Opinion of the Court.</p>	

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PETITIONS FOR REHEARING

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA157	Case No. 09SC358
Petitioner: Rosten Lee Clark, v. Respondent: The People of the State of Colorado.	
Petition for Rehearing DENIED. EN BANC.	

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PETITIONS FOR WRIT OF CERTIORARI

No. 09SC495
Court of Appeals Case No. 07CA1406

Petitioner/Cross Respondent:

The People of the State of Colorado,
v.

Respondent/Cross-Petitioner:

Jason Lee Smith.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE HOBBS and JUSTICE EID would grant as to the following issues:

Whether a trial court's failure to give an affirmative defense instruction for the defense of consent constitutes plain error where the defendant expressly refuses the affirmative defense and informs the court that it is relying on a different theory of defense.

Whether the failure to give an affirmative defense instruction under these circumstances constitutes invited error.

Whether a defendant's election to testify is a prerequisite for the admissibility of evidence of a defendant's prior conviction.

Whether evidence that the defendant compelled the victim to recant in this case by warning her that, if she did not, it would negatively impact his sentence in his federal case was admissible under either CRE 404(b) or as res gestae evidence.

No. 09SC1026
Court of Appeals Case No. 08CA1702

Petitioners:

The Estate of Dennis Scoggins, a minor child and H. Wayne Wilson,
Conservator,
v.

Respondents:

Encompass Insurance Company and Glens Falls Insurance Company.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 09SC1075
Court of Appeals Case No. 08CA1933

Petitioners:

Brian C. Joondeph, Shirley S. Joondeph, and Citimortgage, Inc.,
v.

Respondent:

Donald P. Hicks.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 09SC1083
El Paso County District Court Case No. 09CV4298

Petitioner:

Ronald Walker,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC126
Court of Appeals Case No. 06CA2525

Petitioner:

Andrew T. Plancarte,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC200
Court of Appeals Case No. 09CA71

Petitioner:

Atorrus Rainer,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 10SC212
Court of Appeals Case No. 07CA1715

Petitioner:

Tom Wendell Barrus,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC213
Court of Appeals Case No. 09CA845

Petitioner:

Holly Hand,
v.

Respondents:

Industrial Claim Appeals Office of the State of Colorado; Petersen Contractors & Excavation, Inc.; AMS Staff Leasing; GI Global Insurance; Colorado Insurance Guaranty Association; and Western Guaranty Fund Services.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 10SC219
Court of Appeals Case No. 09CA173

Petitioner:

Aggregate Industries-WCR, Inc.,
v.

Respondents:

City of Commerce City and Roger Tinklenberg, in his official capacity as Director of Finance, City of Commerce City, Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 10SC252
Court of Appeals Case No. 07CA2325

Petitioner:

Ross Alley,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.
