

<p>3COURT OF APPEALS, STATE OF COLORADO  2 E. 14<sup>th</sup> Avenue  Denver, CO 80203</p> <hr/> <p>Appeal from the District Court, City and County of  Denver, State of Colorado  Honorable Kandace C. Gerdes, presiding  Trial Court Case No.: 2019CV30927</p> <hr/> <p><b>Plaintiff-Appellant:</b> JANET MONSON,</p> <p>v.</p> <p><b>Defendants-Appellees:</b> COLORADO DEPARTMENT  OF HUMAN SERVICES, and</p> <p>SHANNON MULHALL, in her official capacity as  custodian of records for the Colorado Department of  Human Services.</p> <hr/> <p><i>Counsel for Plaintiff-Appellant:</i>  William S. Finger, No. 7224  Casey J. Leier, No. 45155  Finger Law, P.C.  29025-D Upper Bear Creek Rd.  P.O. Box 1477  Evergreen, CO 80437-1477  Telephone: (303) 674-6955  Facsimile: (303) 674-6684  E-mail: <a href="mailto:bill@fingerlawpc.com">bill@fingerlawpc.com</a>  <a href="mailto:casey@fingerlawpc.com">casey@fingerlawpc.com</a></p>	<p style="text-align: center;"><b>▲COURT USE  ONLY▲</b></p> <hr/> <p>Case No.:</p>
<p><b>NOTICE OF APPEAL</b></p>	

Plaintiff-Appellant, Janet Monson, through her undersigned attorneys,  
hereby files her Notice of Appeal pursuant to C.A.R. 3(a) and 3(d) appealing the

Order of the District Court of the City and County of Denver, State of Colorado, dated July 24, 2019, in Case No. 2019CV030927, that granted Defendants' Motion to Dismiss with Prejudice and the Order of August 9, 2019, that denied the Plaintiff's motion to amend and vacate the order of dismissal pursuant to C.R.C.P. 58, 59, and 60.

**I. Preliminary information**

A. Trial Court Information:

District Court: City and County of Denver  
District Court Judge: The Honorable Kandace C. Gerdes  
Case Number: 2019CV030927

B. Parties Initiating Appeal: Plaintiff Janet Monson is the initiating party.

**II. Nature of the Case**

A. Nature of the controversy. This is an appeal from the District Court of the City and County of Denver, Colorado, of an order granting a Motion to Dismiss with prejudice, which order entered on July 24, 2019. **Appendix A.** The court's order of August 9, 2019 denying the Plaintiff's motion to amend and vacate the order of dismissal with prejudice is **Appendix B.**

The order of dismissal determined that the claims made by the Plaintiff relating to the Colorado Open Records Act and her request for records were not well founded. The original CORA Complaint is **Appendix C.**

Plaintiff, Ms. Monson, is an Asian-Pacific, Korean-born female working as Director of Nursing (“DON”) for the Colorado Department of Human Services at the Wheat Ridge facility. In July 2018, Ms. Monson filed an internal grievance alleging unequal pay and discriminatory or retaliatory treatment. In the grievance process, the Department’s advised that an investigation would be conducted of the unequal pay complaint. An outside investigations company called Investigations Law Group was hired by the Department to do the investigation.

On October 30, 2018, Plaintiff, through her attorneys, filed a request under CORA for: “1) The investigation report, findings, summary, and attendant exhibits regarding an investigation of pay discrimination conducted in calendar year 2018 by Investigations Law Group on behalf of CDHS relating to the unequal pay claim of Janet Monson. 2) All wage information for state employees provided to Investigations Law Group relating to its investigation or review of the unequal pay claim made by Janet Monson. 3) All documents provided to Investigations Law Group that supports the Department’s position that wage discrimination was not occurring relating to Janet Monson.”

The Department on November 2, 2018, through Records Custodian Shannon Mulhall, approved the request, estimated the work to obtain the requested records would require three hours, and required a \$60 payment. A \$60 payment by check

was supplied by Plaintiff's counsel to Defendants.

After the payment was supplied, on November 16, 2018, the Department instead of providing the records denied Plaintiff's CORA request, citing to attorney-client and work product privileges and stating that the records would need to be redacted. That determination was contested by Ms. Monson. On January 10, 2019, Defendants sent a third letter to Plaintiff, revising the position to indicate that Plaintiff's CORA request was not denied but was approved, but that Ms. Monson would be required to pay \$5,850 for the records so that the Defendants could conduct a redaction of the records prior to production.

Timely notice was given pursuant to CORA that litigation would be brought if the records were not furnished. Plaintiff offered to pay some additional amount but asserted that \$5,850 was an unreasonable sum. Defendants refused to provide the records, even though CORA provided for one hour at no charge and two hours were already paid by Ms. Monson.

Defendants moved to dismiss Plaintiff's complaint, asserting that Plaintiff was required to pay \$5,850 before any records were turned over to the Plaintiff. No evidence was offered that any attorney-client privilege or work product privilege existed nor that there was a good faith basis at the time for that privilege assertion given that there was no review of the records by the Attorney General's office.

The Plaintiff contested the motion and requested a hearing. No hearing in the case was granted. **Appendix D.** Plaintiff alleges error by the court under Rules 58, 59, and 60.

The court below found, in its order dismissing the case, that “the crux of the issue is whether the records were withheld from (sic) Plaintiff.” Further, the court found that “no correspondence...contains a refusal to produce...the records.” Plaintiff asserts that these findings are erroneous. No further analysis was conducted by the lower court.

B. Order being appealed and jurisdiction of the court. The Plaintiff, Ms. Monson, seeks review and reversal of the July 24, 2019, order of the court that dismissed the case with prejudice, and the August 9, 2019, order denying Plaintiff’s motion to vacate and amend the July 24 order.

This Court has jurisdiction to review the final order of the District Court dismissing the case with prejudice pursuant to CRS 13-4-102 and C.A.R. 3 (a) and C.A.R. 3 (d).

C. Whether the order resolved all issues pending before the Court. The court’s order of dismissal with prejudice and the its order denying Plaintiff’s motion to vacate the order of dismissal resolved all issues pending before the lower court.

D. Whether the order is final for purposes of appeal. The orders are final for purposes of appeal.

E. Date of service of final order. The orders are dated July 24, 2019, and August 9, 2019, respectively and were served on the same dates.

### **III. Advisory list of issues on appeal**

Whether the court erroneously denied the lawsuit.

Whether the lower court erroneously found that no denial of records occurred when no documents were produced yet Plaintiff made a payment for two hours (plus one free hour by statute is automatic).

Whether the court erroneously failed to conduct any analysis of what was requested in the CORA request to determine the reasonableness of the Defendants' estimated hours for review.

Whether the court erroneously failed to conduct any analysis of the claimed attorney-client and work product privileges and need for redactions.

Whether the court erroneously failed to make a finding regarding whether CORA allows for the Defendants to charge a requestor for the Defendants' redaction time.

Whether the court erroneously failed to allow for a hearing on the questions raised in the case.

Whether the court erroneously failed to properly apply the plausibility standard and view the facts in a light most favorable to the Plaintiff in considering the Defendants' motion to dismiss.

Whether the court erroneously failed to consider the public policy underlying CORA, which is to create a strong presumption in favor of public access to the workings of government.

Whether the court properly found that no records were withheld.

**IV. Whether the transcript is necessary on appeal**

No hearing or trial occurred, and no transcript is necessary.

**V. Counsel for the parties**

Plaintiff-Appellant Counsel for Appeal

William S. Finger, Reg. #7224

Email: [bill@fingerlawpc.com](mailto:bill@fingerlawpc.com)

Casey Leier, Reg. # 45155

Email: [casey@fingerlawpc.com](mailto:casey@fingerlawpc.com)

P.O. Box 1477

Evergreen, CO 80437-1477

Defendants-Appellees Counsel

Jack D. Patten, III, Reg. 36882

[Jack.patten@coag.gov](mailto:Jack.patten@coag.gov)

Sr. Assistant Attorney General

Lucia Padilla, 35130

Assistant Attorney General

Civil Litigation and Employment Law Section

1300 Broadway, 10<sup>th</sup> Floor

Denver, CO 80203

## VI. APPENDIX

The court's order of July 24, 2019, granting Defendants' motion to dismiss is Appendix A to this Notice of Appeal.

The court's order of August 9, 2019, denying Plaintiff's motion to vacate the order of dismissal is Appendix B.

The Plaintiff's complaint is Appendix C.

The court's order denying a hearing is Appendix D.

The Defendant's motion to dismiss is Appendix E

The Plaintiff's response is Appendix F.

Respectfully submitted this 13th day of August, 2019.

FINGER LAW, P.C.

/s/ William S. Finger

William S. Finger, No. 7224

/s/ Casey J. Leier

Casey J. Leier, No. 45155

PO Box 1477

Evergreen, CO 80437-14779

Email: [bill@fingerlawpc.com](mailto:bill@fingerlawpc.com)

[casey@fingerlawpc.com](mailto:casey@fingerlawpc.com)

*Attorneys for Plaintiff-Appellant*



**CERTIFICATE OF SERVICE**

I certify that I served this Notice of Appeal upon all parties herein by e-filing or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 13th day of August, 2019, addressed as follows:

Jack Patten, III  
Senior Assistant Attorney General  
Lucia Padilla  
Assistant Attorney General  
Employment and Litigation Division  
Colorado Department of Law  
Ralph L. Carr Judicial Center  
1300 Broadway

*/s/ Casey Leier*