ADVANCE SHEET HEADNOTE
September 13, 2021

2021 CO 66

No. 21SA147, *In re Francis v. Wegener*—Right of Access—Supervisory Power of the Court—Injunction Against Self-Representation.

The supreme court makes the rule to show cause absolute and enjoins Robert A. Francis, whether acting individually or on behalf of a trust or some other entity, from ever again proceeding pro se as a proponent of a claim (i.e., as a plaintiff, third-party claimant, cross-claimant, or counter-claimant) in any present or future litigation in the state courts of Colorado. While the Colorado Constitution confers upon every person an undisputed right of access to our state courts, that right isn't absolute. A party's constitutional right of access to the courts must sometimes yield to the constitutional right of other litigants and the public to have justice administered without denial or delay. Such is the case when courts are called upon to curb the deleterious impact that duplicative and baseless pro se litigation has on finite judicial resources.

Francis has been abusing the judicial process for the purpose of harassing his adversaries for the better part of a decade. State courts have warned, reprimanded, and sanctioned Francis—all to no avail. Even the suspension of his law license has failed to deter his appalling conduct. Under the circumstances, the extraordinary injunction requested is amply justified. Of course, Francis may still obtain access to judicial relief—he just may not do so without legal representation.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 66

Supreme Court Case No. 21SA147
Original Proceeding Pursuant to C.A.R. 21
District Court, City and County of Denver, Case No. 21CV91
Honorable Shelley Gilman, Judge

In Re

Plaintiff:

Robert A. Francis,

v.

Defendants:

Benjamin Wegener; Younge & Hockensmith, P.C.; Wegener, Scarborough, Younge & Hockensmith, LLP; and Aspen Mountain Condominium Association.

Rule Made Absolute
en banc
September 13, 2021

Plaintiff Robert A. Francis, pro se
Aspen, Colorado

Attorneys for Defendants Benjamin Wegener; Younge & Hockensmith, P.C.; and Wegener, Scarborough, Younge & Hockensmith, LLP:
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JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 The Colorado Constitution confers upon every person an undisputed right of access to our state courts. Colo. Const. art. II, § 6. But this right isn't absolute. A party's right of access to the courts must sometimes yield to the constitutional right of other litigants and the public to have justice administered without denial or delay. Such is the case when courts are called upon to curb the deleterious impact that duplicative and baseless pro se litigation has on finite judicial resources. Indeed, on several occasions, we have permanently enjoined an individual from proceeding pro se as a proponent of any claim in pending or future litigation in state court. We do so again today.

¶2 For the reasons we articulate in this opinion, Robert A. Francis, whether acting individually or on behalf of a trust or some other entity, is now enjoined from proceeding pro se as a proponent of a claim (i.e., as a plaintiff, third-party claimant, cross-claimant, or counter-claimant) in any present or future litigation in the state courts of Colorado. No one is entitled to use the judicial process for the purpose of harassing his or her adversaries. And when someone like Francis insists on doing just that for the better part of a decade, including after courts have warned him, reprimanded him, and sanctioned him, and after his law license has been suspended, it is incumbent on us to step in and say "enough."

I. Facts and Procedural History

¶3 Since 2010, Francis, both as an attorney of record and in a pro se capacity, has initiated numerous legal proceedings (including several appeals) related to the same disputes. All told, he has filed twenty-seven cases—with the last twenty-six being duplicative or otherwise frivolous, groundless, and vexatious. Francis has forced our courts to play what has essentially become a game of judicial whack-a-mole. He simply refuses to stop litigating the same successive and stale claims, harassing his opponents in the process. Admonitions and sanctions by multiple tribunals and the suspension of his law license have done nothing to deter him. Finally at their wit's end, Younge & Hockensmith, P.C., its successor firm, Wegener, Scarborough, Younge & Hockensmith, LLP, and one of the firm's attorneys, Benjamin M. Wegener (collectively "Petitioners")—all victims of Francis's abusive tactics—brought this original proceeding to request that we enjoin Francis from ever appearing pro se as a proponent of a claim in any present or future litigation in state court. Under the circumstances, we conclude that the only way to prevent any further misuse of the legal system by Francis is to grant the relief requested.

¶4 Because simply stating that Francis has filed some twenty-seven separate cases related to the same claims doesn't quite capture the egregious nature of his conduct, and because we deem it important to demonstrate that the extraordinary

sanction we impose today is amply justified, we painstakingly discuss each pertinent cause of action. Thus, after introducing the conflicts at the heart of these contentious proceedings, we describe in some detail the litigation in 10CV201 (the primary case) and then briefly review each lawsuit that can be traced back to it.

A. The Genesis of the Conflict

¶5 In the late 2000s, the Francis parties (Francis, several of Francis's family members, and multiple trusts owned and/or operated by the Francis family) owned Unit 1-A in the Aspen Mountain Condominiums.[1] In 2009, a sewage drain backup purportedly caused water damage to that unit. Convinced that the water damage stemmed from a common element in the condominiums, Francis submitted an insurance claim to American Family Insurance, the insurance carrier for the Aspen Mountain Condominium Association ("AMCA"), the homeowners' association for the Aspen Mountain Condominiums.

¶6 Around the same time, in 2010, AMCA, with approval from the majority of the unit owners, amended the Aspen Mountain Condominiums' governing

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[1] To be clear, the Francis parties did not remain constant throughout this extensive and duplicative litigation. Different entities controlled by Francis and/or his family alternated as plaintiffs in the cases. Furthermore, Francis, in his individual capacity, was a named plaintiff in some, but not all, of these cases. For the sake of convenience, in this opinion, when we mean Francis individually, we refer to "Francis," but we otherwise generally refer to the "Francis parties."

declarations. Whereas the original 1972 declarations had allocated common interest shares and expenses based on unit size, the 2010 amendment did so equally among all units. Because Unit 1-A was one of the smaller units, the Francis parties' assessment rate increased from 8% to 9%. Having anticipated this increase in expenses, the Francis parties had cast the only vote against the 2010 amendment.

¶7 These two events—the damage to Unit 1-A from the sewage drain backup and the 2010 amendment to the declarations—acted as the catalysts for the protracted litigation that prompted Petitioners' request for relief. It all started in 2010, but a decade-plus later, the Francis parties are still at it.

B. The Primary Lawsuit, Including the Three Related Appeals

¶8 In 2010, the Francis parties brought suit in Pitkin County district court. They (1) sought damages related to the sewage drain backup and (2) asked the court to enter a declaratory judgment establishing that the declarations' 2010 amendment was void because it lacked unanimous support from the unit owners. AMCA and its board of directors disagreed on both fronts and opposed the Francis parties' requests.

¶9 After filing their lawsuit, the Francis parties stopped paying most of the assessments due for Unit 1-A. AMCA thus filed a separate complaint against them seeking to recover those assessments.

¶10 The two actions were consolidated in 10CV201. Though the Francis parties were represented by counsel, Francis (a practicing attorney at the time) filed some pleadings pro se. He did so even after the district court entered an order barring him from submitting pro se filings while represented by counsel.

¶11 In 2015, following years of litigation, the district court accepted a "stipulation of partial dismissal with prejudice" related to the claims brought by the Francis parties based on the sewage drain backup. The court later entered judgment against the Francis parties on their claim regarding the declarations, concluding that the 2010 amendment was valid and that the Francis parties owed unpaid assessments to AMCA at the new rate of 9%. Given the Francis parties' default in payment of the assessments due, the court also entered a decree of judicial foreclosure against Unit 1-A. Finally, pursuant to Colorado law governing common ownership communities, the court imposed attorney fees against the Francis parties.[2]

¶12 The Francis parties appealed, asserting, among other things, that the district court had erred in declaring the 2010 amendment valid. They argued that the 1972 declarations could not be amended without a unanimous vote. In February 2017,

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[2] Before the final judgment entered, the court had awarded attorney fees against the Francis parties on multiple occasions for advancing baseless claims.

a division of the court of appeals agreed with them. *Francis v. Aspen Mountain Condo. Ass'n*, 2017 COA 19, ¶ 23, 401 P.3d 125, 130. As relevant here, the division remanded the matter to the district court to reconsider the propriety of the judgment and decree of foreclosure and to determine how much, if at all, the Francis parties owed in unpaid assessments. *Id.* at ¶ 39, 401 P.3d at 132.

¶13 On remand, the district court held a hearing, applied the original assessment rate of 8%, and entered a different judgment in favor of AMCA. It ordered the Francis parties to pay AMCA $285,447.92 in assessments due, collection costs, and attorney fees and costs.

¶14 The Francis parties appealed again. They contended that the district court had erred on remand by (1) failing to adhere to the division's initial opinion; (2) awarding AMCA attorney fees and costs; and (3) admitting into evidence a spreadsheet that summarized records related to the Francis parties' account. Both parties requested an award of attorney fees and costs on appeal. In September 2019, a different division of the court of appeals affirmed the district court's judgment on remand. *Francis v. Aspen Mountain Condo. Ass'n*, No. 18CA772, ¶ 10 (Sept. 26, 2019). And, as to the cross-motions for appellate attorney fees and costs, it denied the Francis parties' request but granted AMCA's. *Id.* The division then remanded the matter to the district court to award AMCA its reasonable attorney fees and costs on appeal. *Id.*

¶15 In March 2020, after the district court awarded AMCA its reasonable attorney fees and costs on appeal, the Francis parties filed a third appeal. However, a division of the court of appeals dismissed the appeal in February 2021 because the Francis parties filed "no response" to the motion to dismiss submitted by the appellees. *Judi B. Francis Irrevocable Tr. v. Miller*, No. 20CA845, 1 (Feb. 8, 2021). The division also observed that the trusts named as appellants could not appear pro se. *Id.*

¶16 Importantly, before the years-long litigation in 10CV201 finally came to an end, the Francis parties initiated numerous other legal proceedings related to the same disputes. We summarize those duplicative proceedings, which spanned eight years (between 2013 and 2021), next.[3]

C. The Second Lawsuit

¶17 In February 2013, while 10CV201 was still pending in district court, the Francis parties filed a new case in county court in Pitkin County, 13C35. This action raised issues that were implicated in 10CV201. One of the parties designated as a *plaintiff* in the new action was AMCA, even though the Francis parties had no authority from AMCA to commence a lawsuit on its behalf. The

[3] Petitioners argue that the Francis parties have filed at least twenty-eight cases related to the issues, judgment, and/or sanctions in 10CV201. We count a total of twenty-seven cases, including 10CV201.

Francis parties ultimately dismissed this case voluntarily, but not before initiating a third lawsuit.

D. The Third Lawsuit

¶18 In August 2013, while 10CV201 and 13C35 remained pending, the Francis parties filed a third lawsuit, 13C30039, in county court in Pitkin County. The Francis parties again included AMCA as a *plaintiff* in this case without AMCA's authority. The named defendants in this action were three members of AMCA's board of directors ("Board Members"). The Francis parties claimed that there was no valid board of directors at AMCA and that, therefore, any actions taken by AMCA during the relevant timeframe were invalid. This case was consolidated with 10CV201.

E. The Fourth Lawsuit

¶19 In December 2013, while 10CV201 was still pending in district court, the Francis parties filed 13CV30135 in Pitkin County district court. Once again, they named AMCA as a *plaintiff* despite having no authority to do so. Belfor, the contractor that completed repair work in Unit 1-A after the sewage drain backup, was a named *plaintiff* as well. According to the Francis parties, Belfor could be added as an *involuntary* plaintiff because of its refusal to join the litigation.

¶20 The named defendants in this case included American Family Insurance, the Board Members, AMCA's property management company (and that

company's principal, Ronald Erickson), and Scott Harper (an attorney who represented AMCA in 10CV201). The Francis parties contended that: Harper and the Board Members had assisted in the preparation and recording of a lien and a lis pendens in relation to Unit 1-A based on the alleged assessment delinquency; the Board Members had refused to indemnify the Francis parties or Belfor; and American Family Insurance had refused to pay claims owed to the Francis parties or Belfor. Additionally, the Francis parties asserted that AMCA's property management company and Erickson had not only lacked permission to take action in relation to the lien and lis pendens but had also engaged in the unauthorized practice of law and violated their respective real estate broker licenses. An attorney who had not previously entered his appearance in this case eventually filed a notice of dismissal on behalf of the Francis parties. The case was thus dismissed.

F. The Fifth Lawsuit

¶21 In mid-May 2014, while 10CV201 remained pending in district court, the Francis parties filed their fifth lawsuit, 14S18, this time in Pitkin County small claims court. In this case, they named AMCA as the sole defendant. They claimed that they were entitled to a refund of all their assessment payments between 2011 and 2014 because the budgets adopted by AMCA for the Aspen Mountain Condominiums during that timeframe were invalid. The Francis parties further

challenged the common expense assessments charged by AMCA during the same period as improperly calculated. These issues had been previously raised by the Francis parties in 10CV201, and so 14S18 was consolidated with 10CV201.

G. The Sixth Lawsuit

¶22 Just six days after commencing their fifth lawsuit, and despite the fact that 10CV201 was still pending in district court, the Francis parties initiated another cause of action, 14S19, again in small claims court in Pitkin County, this time against the Board Members. In this case, Francis designated himself as "attorney in fact" and "protector" of a family trust. At the Francis parties' request, the case was dismissed without prejudice by the court three months later, in August 2014.

H. The Seventh Lawsuit

¶23 Approximately a year later, in May 2015, the Francis parties filed a new case in county court, but this time in Eagle County. This case, 15C12, was brought against AMCA and John Lassalette, an attorney who represented AMCA in 10CV201. Though the Pitkin County district court had not yet fully resolved the claims in 10CV201, it had already sanctioned the Francis parties multiple times through attorney fee awards for filing "spurious documents," submitting

"frivolous" motions, and advancing duplicative third-party claims against the same defendants.[4]

¶24 In the complaint filed in 15C12, the Francis parties asserted that none of the assets they controlled could be reached by the creditors in 10CV201. They further maintained that Francis was not a party in 10CV201 "in any fashion or capacity" and that he had no "connection with the case whatsoever." Moreover, the Francis parties claimed that the sanctions imposed against them in 10CV201 were invalid because the court lacked personal jurisdiction over them. And they averred that they were being harmed by collection efforts related to certain orders and sanctions in that case.

¶25 The county court in Eagle County certified venue to the county court in Pitkin County in September 2015, and 15C12 became 15C21 after the venue change. In November 2016, the county court in Pitkin County dismissed the case, finding that the Francis parties' claims lacked substantial justification. The court then awarded attorney fees against the Francis parties.

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[4] In this and subsequent cases, the Francis parties collaterally attacked certain orders and sanctions in 10CV201. While the Francis parties called such orders and sanctions "judgments," we refer to them here as "orders and sanctions" to distinguish them from the final judgment and decree of foreclosure in that case (which, at this point in the chronology, had not yet entered).

¶26 Francis filed an appeal of the award of attorney fees in 15C21. Only attorney Lassalette was named as a respondent in the appeal. The Pitkin County district court affirmed the award of attorney fees entered by the county court, finding that the Francis parties' claims "lacked substantial justification" and "were meritless and groundless." In so doing, the district court determined, among other things, that the Francis parties should not have brought a collateral attack in Eagle County against orders and sanctions entered in Pitkin County in 10CV201.

I. The Eighth Lawsuit

¶27 Less than two weeks after the change of venue that transformed 15C12 into 15C21, the Francis parties initiated another county court case, 15C22, in Pitkin County. There, they went after Erickson (the principal of AMCA's property management company) and attorney Michael Milstein, who represented Erickson in 10CV201. In challenging orders and sanctions entered in 10CV201, the Francis parties insisted that they were not parties to that case and that collection efforts in that case were harming them. The court dismissed 15C22 in January 2016 after finding that the Francis parties were corporate entities that could not proceed in litigation pro se.

J. The Ninth Lawsuit

¶28 In September 2015, while 15C21 and 15C22 were still pending, the Pitkin County district court entered judgment and a decree of foreclosure against the

Francis parties in 10CV201. Two months later, in November 2015, Francis brought yet another county court case in Pitkin County, 15C28. He sued AMCA, the Board Members, Younge & Hockensmith, P.C. (which was involved in the drawn-out litigation in 10CV201), Margaret Foley (an attorney employed at Younge & Hockensmith, P.C.), and attorney Lassalette. Francis attacked the judgment, orders, and sanctions entered in 10CV201, arguing that the district court in that case lacked jurisdiction over the Francis parties. The matter was dismissed six days later upon the defendants' motion.

K. The Tenth Lawsuit

¶29 Though 15C21 and 15C22 remained pending, Francis brought 15C30 in county court in Pitkin County in December 2015. This case mirrored 15C22: It was filed against the same defendants and it advanced the same claims. The court granted the defendants' motion to dismiss the case three months after it was filed, in March 2016.

L. The Eleventh Lawsuit

¶30 In June 2016, the Francis parties filed yet another lawsuit against Erickson, AMCA, the Board Members, Younge & Hockensmith, P.C., and attorneys Lassalette, Milstein, and Foley. This was 16C15 in county court in Pitkin County. The Francis parties again attacked the judgment, orders, and sanctions in 10CV201. The court ultimately dismissed this matter at the defendants' request.

M. The Twelfth Lawsuit

¶31 In February 2017, the Francis parties initiated a new lawsuit in Pitkin County district court, 17CV30014. Francis identified himself both as a "party without attorney" and as attorney of record for the plaintiffs, which included AMCA (again without its authority). But AMCA was also a named defendant. The Board Members, Erickson, Younge & Hockensmith, P.C., and attorneys Lassalette and Foley rounded out the named defendants. This case was used as another vehicle to attack the judgment, orders, and sanctions in 10CV201. The Francis parties eventually moved to dismiss this case. Before ruling on their motion, the court ordered briefing on the defendants' request to make the dismissal with prejudice—a request the Francis parties opposed. After reviewing the parties' arguments, the court dismissed the case with prejudice, reasoning that the Francis parties had "previously dismissed actions based on and including the same claims . . . dismissed in this action."

N. The Thirteenth Lawsuit

¶32 In July 2017, before the dismissal of 17CV30014, the Francis parties sued AMCA in 17CV30066 in Pitkin County district court. Francis designated himself as attorney of record for the Francis parties. This matter involved claims related to the assessments in question in 10CV201. The court ordered a hearing to determine whether the issues raised were duplicative of the issues in 10CV201,

which was pending on remand before a different division of the Pitkin County district court. The Francis parties failed to set the matter for a hearing and then failed to respond when the clerk notified the parties that the matter would be dismissed for failure to prosecute if a hearing was not timely scheduled. Thus, the court dismissed the case.

O. The Fourteenth Lawsuit

¶33 In September 2017, the day before voluntarily moving to dismiss 17CV30014, the Francis parties brought 17CV30093 in Pitkin County district court. This time, they sued AMCA, the Board Members, Erickson, Younge & Hockensmith, P.C., and attorneys Lassalette, Foley, and Richard Cummins (another attorney involved in the never-ending litigation in 10CV201). The thrust of this action was to request that the court declare the judgment, orders, and sanctions in 10CV201 invalid. The court dismissed the matter upon the defendants' motion two months later, in November 2017.

P. The Fifteenth Lawsuit

¶34 In February 2018, the Francis parties filed 18CV30016 against AMCA in Pitkin County district court. Francis appeared as attorney of record. The claims raised in this action were identical to those brought in 17CV30066, which the court had just dismissed four days earlier. Since the claims involved a collateral attack on the judgment, orders, and sanctions in 10CV201, the court stayed the

proceedings pending resolution of that case. The matter was later consolidated with a future case filed by the Francis parties, 19CV30126.

Q. The Sixteenth Lawsuit

¶35 With Francis appearing as attorney of record, the Francis parties commenced 19CV30032 in Pitkin County district court in early April 2019. This case was against Erickson. The Francis parties again alleged that the judgment, orders, and sanctions in 10CV201 were void. Erickson filed a motion to dismiss, which the court treated as a motion for summary judgment. The court then entered judgment against the Francis parties under the doctrine of claim preclusion.

R. The Seventeenth Lawsuit

¶36 In mid-April 2019, less than two weeks after filing 19CV30032, the Francis parties filed 19CV30036 (again in Pitkin County district court). This new case was essentially a carbon copy of 19CV30032. The matter was dismissed by the court less than a month after it was filed.

S. The Eighteenth Lawsuit

¶37 In mid-May 2019, the Francis parties filed 19CV30054 in Pitkin County district court. With Francis as attorney of record, they sued AMCA, alleging that the transcript of the judgment against Unit 1-A in 10CV201 was a spurious lien. In the process, they mounted another collateral attack against the attorney fees

awarded in that case. In November 2019, two months after the court of appeals affirmed the judgment entered following the remand hearing in 10CV201, Judge Seldin granted AMCA's motion for summary judgment. In his order, Judge Seldin warned the Francis parties that if they continued to submit duplicative filings, there would be severe consequences:

> This case raises claims that have already been raised—or should and could have been raised—before Judge Lynch [in 10CV201]. These issues have been resolved by Judge Lynch, and now the Court of Appeals, adversely to [the Francis parties]. This case is accordingly barred by claim preclusion. Worse still, [the Francis parties] ha[ve] tried this tactic of collateral attack before and been rejected by this Court for substantially the same reason. Should this pattern continue, the Court will likely conclude that the Francis parties are engaging in vexatious litigation, and restrict future filings from them.

T. The Nineteenth Lawsuit

¶38 Judge Seldin's warning went unheeded. In December 2019, just three weeks after Judge Seldin's summary judgment order, the Francis parties submitted a notice to voluntarily dismiss their claims in their nineteenth lawsuit, 19CV30075, which they initiated in July 2019 in Pitkin County district court. In that notice, they stated: "Defendants are advised that when a party dismissing [sic] a case by notice that that party can refile the case with impunity . . . [and] that it is the

intention of the Plaintiff to refile this case with the addition of parties and claims."[5] They added that attorney fees could not be awarded as a result of the notice of dismissal.

¶39 In response to a motion filed by the defendants shortly thereafter, Judge Seldin issued an order in March 2020 in which he awarded attorney fees against the Francis parties, rebuked them, and then barred Francis from ever submitting another filing pro se in Pitkin County:

> Despite all of the[] prior rulings, attorney Robert Francis has proceeded to file separate collateral attack lawsuits on behalf of each Francis party originally involved in [10CV201], thereby increasing the burden on opposing parties and the judiciary by requiring the Court and opposing counsel to parse each separate case to determine how, if at all, it differs from those filed before. The outcome of this stubbornly litigious, vexatious exercise has been a tremendous waste of judicial resources and the accumulation of pointless attorney fees for the Defendants. Mr. Francis has been sanctioned for such conduct by other divisions of the Court. Thus far, however, such sanctions appear to have had no effect. Instead, his pattern of filing new lawsuits raising different variations of the same collateral attack continues.
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> This series of events leads the Court to find and conclude that Robert Francis and the Francis parties have long engaged in a vexatious pattern of filing lawsuits for strategic purposes to punish Defendants, extract some sort of settlement from them, or both.

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[5] This case was brought against AMCA and attorney Harper. The Francis parties asserted that the 2010 vote to amend the 1972 declarations was invalid and that, therefore, AMCA's foreclosure action and the transcript of the judgment in 10CV201 were void.

Because Robert Francis is himself one of the Francis parties, these filings have presumably been costless to the Francis parties from an attorneys' fees perspective. Meanwhile, Defendants incur thousands of dollars in fees every time Robert Francis files a new frivolous case against them. The Court finds and concludes from this pattern that the Francis parties have been operating in bad faith for quite some time.

This is unacceptable and besmirches the legal profession. Previous . . . divisions of this Court [have attempted] to stop this conduct . . . by imposing sanctions. The Court does the same here, and concludes that in light of the circumstances, Robert Francis and the Francis parties are ineligible for the safe harbor that permits parties and attorneys to avoid sanctions by voluntar[ily] dismissing a case.

. . . .

Given that such past awards of sanctions appear not to have provided an effective deterrent, however, the Court further concludes that additional measures are necessary.

The Court therefore bars Plaintiff from filing any lawsuits, pleadings, motions, briefs, suggestions, advisements or other papers of any kind in the Pitkin County Combined Courts without an accompanying certification by an attorney that the pleading is well-grounded in fact and law. Any filing which fails to contain such a certification shall be automatically stricken without the need for any action by an opposing party.

¶40 At the end of his order, Judge Seldin directed the clerk of the Pitkin County combined courts to transmit a copy of his order to the Office of Attorney Regulation Counsel ("OARC").[6]

U. The Twentieth Lawsuit

¶41 In October 2019, after 19CV30075 was filed, but before Judge Seldin issued the March 2020 order in that case, the Francis parties initiated their twentieth lawsuit, 19CV30123. This cause of action was brought in Pitkin County district court against attorney Milstein and the Land Title Guarantee Company. The Francis parties again attacked the validity of the judgment and sanctions in 10CV201. In dismissing the case, Judge Norrdin took judicial notice of Judge Seldin's March 2020 order and likewise barred Francis "individually and any entity for which he is an attorney, trustee, or representative from filing any lawsuits, pleadings, motions, briefs, suggestions, advisements or other papers" in any of the Pitkin County combined courts without first obtaining "an accompanying certification by an attorney that the pleading is well-grounded in fact and law."

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[6] Pursuant to the Presiding Disciplinary Judge's recommendation, our court temporarily suspended Francis's law license in November 2020 pending disciplinary proceedings. A disciplinary hearing is scheduled to take place in October 2021.

V. The Twenty-First Lawsuit

¶42 The twenty-first lawsuit was also filed before Judge Seldin's March 2020 order in 19CV30075. This case, 19CV30126, was filed in Pitkin County district court in November 2019, a week after 19CV30123 was filed. This time, the Francis parties went after AMCA, Steve Daubenmier (one of the Board Members), and attorneys Harper and Lassalette. The Francis parties again argued that the 2010 vote to amend the 1972 declarations was invalid and that the amount charged for assessments due was incorrectly calculated. The court consolidated this case with 18CV30016. In March 2021, the court entered an order granting the defendants' motion to dismiss and imposing sanctions against Francis individually and the Francis parties collectively for having asserted claims that "were frivolous and vexatious."

W. The Twenty-Second Lawsuit

¶43 Like the twentieth and twenty-first lawsuits, the twenty-second lawsuit preceded Judge Seldin's March 2020 order in 19CV30075. In this case, 20CV30005, the Francis parties sued the Board Members, attorney Lassalette, and attorney Cummins's firm, Cummins and Krulewitch, P.C., in Pitkin County district court in January 2020. The court eventually issued an order in which it noted that this action appeared to be "yet another attempt by the Francis parties to collaterally attack valid prior judgments of this Court that have been affirmed on appeal, or

allowed to become final without appeal." The court thus directed the Francis parties to show cause as to why the case should not be dismissed. The matter was thereafter dismissed in an order that characterized the proceeding as "the latest in a pattern of filings by Robert Francis and Francis family members and entities designed to punish adversaries through the imposition of litigation transaction costs." The court added that such filings "have no place in our system of justice."

¶44 Around the same time that the Francis parties filed 20CV30005, Judge Lynch issued an order in 10CV201, closing the case. She explained that the case had "been litigated since 2010," that all the issues had been resolved (including on appeal), and that it was "time for the case to be over and final." In a subsequent order dated April 2020, she observed that the Francis parties had continued to file motions that were frivolous and groundless in that case. Accordingly, she incorporated Judge Seldin's March 2020 order barring any future pro se filings by the Francis parties.

¶45 On the heels of Judge Lynch's April 2020 order and the dismissal of the third appeal in 10CV201, the Francis parties took their appalling tactics to a different forum: Denver. There, they continued filing cases related to the issues, orders, sanctions, and judgment in 10CV201.

X. The Twenty-Third, Twenty-Fourth, Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Lawsuits

¶46 Undeterred by the sanctions imposed and the injunctions issued (not to mention Francis's suspended law license), the Francis parties filed 21CV91 in Denver County district court in February 2021. They sued Petitioners and AMCA. According to the Francis parties, during his representation of AMCA in the appeal from the remand judgment in 10CV201, attorney Wegener made false statements to the court of appeals. (The two statements with which the Francis parties took issue were consistent with findings of fact made by the district court.) Petitioners filed a motion to dismiss in March 2021; AMCA filed a separate motion to dismiss in April 2021. The former was granted in April 2021, and the latter is still pending.[7]

¶47 The Francis parties weren't done just yet, though. They filed multiple other actions in Denver County district court in March 2021, including 21CV134 and 21CV135. Both of these cases identified Francis as proceeding "pro se and as the sole beneficiary" of a Francis family trust, even though the court of appeals had previously reminded Francis that trusts cannot proceed in a pro se capacity.

¶48 In 21CV134, the Francis parties sued the Land Title Guarantee Company and requested a declaratory judgment regarding Unit 1-A and the judgment,

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[7] AMCA, through counsel, submitted a "reply brief" in our court in support of Petitioners' C.A.R. 21 petition.

orders, and sanctions in 10CV201. In 21CV135, the Francis parties sued Erickson and AMCA, complaining about the report made to OARC regarding Francis (including the submission of what the Francis parties viewed as a "libelous" affidavit) and AMCA's alleged breach of fiduciary duty.

¶49 Less than a week after filing 21CV134 and 21CV135, the Francis parties filed a fourth case in Denver, 21CV139. Once again, Francis appeared "pro se and as the sole beneficiary" of a Francis family trust. This time, he named AMCA and attorney Lassalette as defendants. The allegations in this complaint were similar to those advanced in 21CV91, the first case filed in Denver.

¶50 The Francis parties then brought 21CV153 (again in March 2021) in Denver County district court. This case identified attorney Cummins as a defendant and advanced allegations related to 10CV201.

¶51 After the fifth Denver case was filed, Petitioners sought this court's intervention through exercise of our original jurisdiction, asking us to issue a rule to show cause as to why Francis should not be "enjoined from seeking any affirmative relief while appearing pro se in any present or future litigation in the state courts of Colorado." We explain next why we issued a rule to show cause.

II. Original Jurisdiction

¶52 Whether to exercise our original jurisdiction under C.A.R. 21 is a matter wholly within our discretion. C.A.R. 21(a)(1). We recognize, however, that

C.A.R. 21 is narrow in scope—it provides an extraordinary remedy that is limited in both purpose and availability. *Winninger v. Kirchner*, 2021 CO 47, ¶ 17, 488 P.3d 1091, 1095.

¶53 We have previously exercised our original jurisdiction to enjoin a litigant from prosecuting any pending or future claims without an attorney. *See Bd. of Cnty. Comm'rs v. Winslow*, 862 P.2d 921, 923–24 (Colo. 1993) ("*Winslow II*"); *Bd. of Cnty. Comm'rs v. Howard*, 640 P.2d 1128, 1129–30 (Colo. 1982); *People v. Dunlap*, 623 P.2d 408, 411 (Colo. 1981); *Bd. of Cnty. Comm'rs v. Barday*, 594 P.2d 1057, 1059 (Colo. 1979). Our power to issue such an injunction is "firmly established" when it is "necessary to stop abuse of the judicial process." *Howard*, 640 P.2d at 1129. Such power "is based upon Article VI, Section 2(1) of the Colorado Constitution, which vests this court with general superintending power over all inferior state courts." *Barday*, 594 P.2d at 1058–59. C.A.R. 21 applies to the exercise of this court's "general superintending authority" over all state courts. C.A.R. 21(a)(1) (relying on article VI, section 2 of the Colorado Constitution).

¶54 We agree with Petitioners that the exercise of our original jurisdiction is appropriate in this case to stop Francis's abuse of the judicial process. Accordingly, we proceed to analyze the merits of Petitioners' request for an injunction.

III. Analysis

¶55 As was the case in *Winslow II*, "the facts before us firmly establish" that Francis has "pressed claims in state courts which previously have been adjudicated as lacking merit." *See* 862 P.2d at 923. Further, it is clear from the record that Francis "has exacted and continues to exact a serious strain on the judicial resources of this state." *See id.* The principal question before us, then, concerns the appropriate remedy to prevent Francis from continuing to interfere with state judicial processes. *See id.*

¶56 Petitioners concede that they didn't ask the Denver district court for the type of injunction issued by Judge Seldin and adopted by his colleagues in Pitkin County. But, in our view, any such injunction would have been as useful as a mosquito net made of chicken wire because it would not have prevented Francis from continuing to file frivolous, groundless, and vexatious state cases in a different county.

¶57 Francis has repeatedly used the legal system to harass Petitioners by forcing them to unnecessarily incur legal fees and costs. Such behavior is harmful to litigants, the courts in general, and the public. Because we concur with Petitioners that the only way to stop the endless frivolous, groundless, and vexatious filings is to bar Francis, whether acting individually or on behalf of some other entity,

from ever appearing pro se again as a proponent of a claim in any pending or future litigation in state court, we now make absolute the rule to show cause.

A. Law

¶58 Article II, section 6 of the Colorado Constitution confers on every person the right to access our state courts. But the right of access is not without limits. *Howard*, 640 P.2d at 1129. It doesn't include "the right to impede the normal functioning of judicial processes." *Barday*, 594 P.2d at 1059. Nor does it encompass "the right to abuse judicial processes in order to harass others." *Id.* To the contrary, the same constitutional provision bestows on every person the right to justice "without . . . denial or delay." Colo. Const. art. II, § 6. This right is jeopardized when a pro se party "pursues myriad claims without regard to relevant rules of procedural and substantive law" because "opposing litigants must bear the expense of defending against meritless claims, and citizens in general suffer the hardships brought about by increased court costs, crowded dockets, and the unreasonable delay and confusion that accompany a disruption of proper judicial administration." *Winslow II*, 862 P.2d at 923.

¶59 Our case law establishes that an individual's "right of access" must be balanced against—and, in a proper case, yield to—"the interests of other litigants and of the public in general in protecting judicial resources from the deleterious impact of repetitious, baseless pro se litigation." *Bd. of Cnty. Comm'rs v. Winslow*,

706 P.2d 792, 794 (Colo. 1985) ("*Winslow I*"). As a guardian of the right to justice without denial or delay, this court has "both the duty and the power to protect courts, citizens and opposing parties from the deleterious impact of repetitive, unfounded pro se litigation." *Dunlap*, 623 P.2d at 410. Consequently, when we find that a pro se litigant's efforts to obtain relief "not only hamper his own cause, but deprive other persons of precious judicial resources," we are compelled to "deny his right of self-representation as a plaintiff." *Barday*, 594 P.2d at 1059.

¶60 The concerns that have motivated us in the past to enjoin someone from advancing any claim without legal representation include: "preventing abuse of the judicial process, refusing to allow the judicial process to be used to harass others, and conserving limited judicial resources." *Winslow I*, 706 P.2d at 794. In deciding whether to issue the type of injunction that Petitioners seek, we must consider the seriousness of the abuses in the context of our previous cases. *Id.* at 795. Hence, we take a moment now to review our precedent.

¶61 In *Shotkin v. Kaplan*, after an unregistered attorney submitted a multitude of meritless claims (including successive ones) in state and federal courts, we enjoined him from filing any more pro se claims, and we noted that, had he been a member of the bar, we would have additionally considered disciplinary action against him. 180 P.2d 1021, 1022 (Colo. 1947). In *Dunlap*, we enjoined certain individuals from being pro se plaintiffs, reasoning both that their method of

procedure posed a threat of a serious strain on judicial resources and that their successive claims demonstrated either an intent to harass or an inability to proceed without legal representation. 623 P.2d at 410–11. And in *Barday*, we prohibited the respondent, who had filed seven duplicative pro se claims regarding his marital dispute, from filing subsequent pro se claims. 594 P.2d at 1059.

¶62 A couple of additional cases—*Winslow II* and *Howard*—warrant expanded analysis. We take each in turn.

¶63 Winslow, who was not an attorney, was sued in a class action for breaching various commitments in connection with property he sold. *Winslow II*, 862 P.2d at 922. After judgment was entered against him, he and his wife brought numerous subsequent actions pro se. *Id.* Over a fourteen-year period, they filed 162 separate cases in state and federal courts. *Id.* We ultimately enjoined them from appearing pro se as proponents of a claim in any litigation in state court. *Id.* at 924 n.2.

¶64 In *Howard*, the respondent was a disbarred attorney who had filed nineteen pro se actions in his role as trustee of his family's trust. 640 P.2d at 1129. We initially ordered him to not submit any more filings on behalf of the trust. *Id.* But he proceeded to file fourteen additional actions that were largely dismissed for lack of merit. *Id.* We then held that he was to be enjoined from filing any more pro se claims because his actions amounted to an unwarranted burden on the judicial process and were prejudicial to the public interest. *Id.* at 1130.

¶65 These cases follow a pattern: the ceaseless filing of meritless (and often successive) claims aimed at harassing opposing parties over a prolonged period of time. As we demonstrate below, Francis's exasperating conduct fits this pattern like a glove.

B. Application

¶66 Though we do not take the request to issue an injunction against Francis lightly—because we understand the critical role of the constitutional right to access our state courts—we have little difficulty making the rule to show cause absolute. Francis has stubbornly disregarded warnings, reprimands, orders, and sanctions from courts—even after having his law license suspended. We have not only the authority but the responsibility to intervene at this point to protect our courts, litigants, and the public from Francis's improper and abusive tactics.

¶67 Francis nevertheless contends that *Winslow II*, the case on which Petitioners rely, "falls light-years outside the parameters of this case." Not so. Francis mistakenly attempts to distinguish *Winslow II* on the ground that Petitioners seek a *statewide* injunction against him. But the Winslows were "enjoined from appearing pro se in *any state court* and from further appearing pro se in *any state court action* . . . pending." *Winslow II*, 862 P.2d at 924 (emphases added). In other words, Petitioners seek the same type of injunction that we issued in *Winslow II*.

To the extent that Francis argues otherwise, he misrepresents our holding in *Winslow II*.

¶68 Next, Francis reminds us that *Winslow II* involved 162, not twenty-seven, cases. Be that as it may, the Winslows were laypeople, not attorneys. As we pointed out in *Winslow II*, the claims filed demonstrated the Winslows' lack of understanding of the fundamental legal principles of jurisdiction, stare decisis, and res judicata. *Id.* at 923. Francis, by contrast, is trained in the law. During most of the relevant timeframe, he was a licensed attorney who had a duty to bring only meritorious claims with a basis in law and fact. *See* Colo. RPC 3.1 (providing that a lawyer shall not bring a claim "unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law"). Instead, he repeatedly initiated frivolous, groundless, and vexatious causes of action. Even after he was sanctioned multiple times and his law license was suspended, Francis persisted in abusing the legal system.

¶69 Moreover, contrary to Francis's suggestion, nowhere in *Winslow II* did we say that the facts before us there "outline[d] the parameters corralling" requests to enjoin a party from appearing pro se. As our jurisprudence makes clear, this is a case-by-case determination.

¶70 Even if Francis's reading of *Winslow II* were correct—it isn't—our analysis would still hold up because *Winslow II* is not a lone wolf. *Howard*, *Dunlap*, *Barday*, and *Shotkin* squarely support today's decision. *Howard*, in particular, is instructive. Howard and Francis were both trained as attorneys. *Howard*, 640 P.2d at 1128. Howard was disbarred, *id.* at 1129, and Francis has been suspended, though neither was deterred from continuing to abuse the legal system by the loss of the privilege to practice law. Further, each filed numerous cases of a duplicative nature while acting as trustee of a family trust. *Id.* at 1128–29. And Howard submitted thirty-three cases in seventeen years, *id.* at 1129, which is in the same ballpark as Francis's twenty-seven cases during the past eleven years.

¶71 In granting the request to enjoin Howard from filing any more pro se complaints in state courts, we observed that his constant and duplicative pro se complaints filed in our courts had caused "an unwarranted burden on the judicial process" and were "prejudicial to the public interest." *Id.* at 1130; *see also Dunlap*, 623 P.2d at 411 (explaining that where a plaintiff proceeds without regard for the law governing his case, his fellow citizens—including opposing litigants—pay the price). That sentiment applies with equal force to Francis's duplicative filings. We therefore echo it here. And, because none of the remedies already tried against Francis have slowed him down, let alone stopped him, we have little choice but to

impose a lifetime bar that prohibits him from ever proceeding pro se as a proponent of a claim in any present or future litigation in Colorado state court.

¶72 In sum, Francis's filings are unacceptable—plain and simple. He "refuses to give up a lost cause, and persists in instituting improper litigation in an attempt to abuse the court system and frustrate his adversaries." *See Winslow II*, 862 P.2d at 923 (quoting an order by Judge Brimmer of the United States District Court for the District of Wyoming, *Winslow v. Williams*, No. 92-CV-0028-B (D. Wyo. May 20, 1992)). Given the baneful effects of such conduct, we cannot allow it to continue.

¶73 Accordingly, Francis, whether acting individually or on behalf of some other entity, is now enjoined from ever again proceeding pro se as a proponent of a claim (i.e., as a plaintiff, third-party claimant, cross-claimant, or counter-claimant) in any present or future litigation in the state courts of Colorado. *See id.* at 924 n.2. We hasten to add that this injunction "does not infringe upon [Francis's] constitutional right of access to the courts because he may still obtain access to judicial relief by employing an attorney authorized to practice in the state of Colorado." *See Winslow I*, 706 P.2d at 794–95; *see also Barday*, 594 P.2d at 1059 (noting that the injunction imposed affected only respondent's right of self-representation, not his right of access to the courts through an attorney of his choice).

IV. Conclusion

¶74 For the foregoing reasons, we make the rule to show cause absolute. Francis, whether acting individually or on behalf of a trust or some other entity, is hereby enjoined from ever proceeding pro se as a proponent of a claim (i.e., as a plaintiff, third-party claimant, cross-claimant, or counter-claimant) in any present or future litigation in the state courts of Colorado. The chief judge of each judicial district should notify the clerk's office(s) in his or her judicial district about this opinion and instruct the staff there to reject any filing from Francis in violation of the injunction we issue today.