APPENDIX A

APPENDIX A — Decision of the State Court of Appeals, 2020-CA-842 (Unpublished), dated "February 10, 2022." (The "Order on Appeal.")

Colorado Court of Appeals
2 East 14th Avenue
Denver CO 80203 United States

DEREK W COLE
21968 EAST PRINCETON DRIVE
AURORA CO 80018

1-214-1014

To: Derek W Cole

Subject: Service of documents in 2020CA842.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Court of Appeals
- Case Number: 2020CA842

- Filing ID: N/A
- Filed Document Title(s):
  - Opinion
- Submitted on Date/Time: Thu Feb 10 18:30:05 MST 2022
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Court of Appeals

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judical Branch website http://www.courts.state.co.us/Index.cfm.

Appendix A

20CA0842 Matter of Cole 02-10-2022

COLORADO COURT OF APPEALS

DATE FILED: February 10, 2022

Court of Appeals No. 20CA0842
City and County of Denver Probate Court No. 19PR31334
Honorable Elizabeth D. Leith, Judge

In re the Matter of Derek Windell Cole Trust,

Derek Windell Cole,

Appellant,

v.

Marcie R. McMinimee, in her capacity as Trustee of the Derek Windell Cole Trust,

Appellee.

ORDER AFFIRMED

Division III
Opinion by JUDGE GOMEZ
J. Jones and Lipinsky, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 10, 2022

Derek Windell Cole, Pro Se

Steenrod, Schwartz, & McMinimee, LLP, Marcie McMinimee, Emily McDaniel, Denver, Colorado, for Appellee

¶ 1 Derek Windell Cole appeals the Denver Probate Court's order approving distributions from a trust of which he is the beneficiary. We affirm.

I. Factual and Procedural Background

¶ 2 After Cole's father died, one of Cole's sisters filed a petition to probate their father's will. The will divided the residuary estate among Cole, his two sisters, and his two oldest children. The will directed that the one-sixth share for Cole would go into a trust, which was to be administered as follows:

> [The] trustee may distribute to, or apply for the benefit of, Derek Windell Cole such amounts of the net income or principal, or both, as [the] trustee may determine to be necessary or advisable to provide for his health, maintenance or support. [The] trustee shall consider all circumstances relevant to the administration of the trust share, including, but not limited to, (a) the financial and other resources of Derek Windell Cole that are outside the trust share and are known to or are readily ascertainable by [the] trustee, and (b) the failure of Derek Windell Cole to provide any requested information. Any undistributed income may be added to principal from time to time in the discretion of [the] trustee.

¶ 3 Cole filed various objections in the estate case, most of which the probate court denied. Cole also contested the will, but, after an

evidentiary hearing, the court rejected his challenge and admitted the will into probate. After further proceedings, the court entered an order of final settlement of the estate on April 25, 2019.

¶ 4 In June 2019, Cole filed a motion in this court for an extension of time to file a notice of appeal. The court granted the motion but told Cole that if he didn't file his notice of appeal by July 18, 2019, the court would lose jurisdiction under C.A.R. 4(a). Cole filed a notice of appeal on August 5, 2019. The court entered an order stating that it lacked jurisdiction to review the case and accordingly closed the appeal. *See In re Estate of Cole*, (Colo. App. No. 19CA1091, Aug. 16, 2019) (unpublished order).

¶ 5 In the meantime, the personal representative of Cole's father's estate filed a petition in the estate case to appoint a trustee for Cole's trust. The court granted the petition over Cole's objection and appointed the office of the public administrator for the City and County of Denver as the trustee. The court later ordered the trustee to file a petition for instructions to address issues Cole had raised in the estate case regarding funds he wanted from his trust to pay for various items.

¶ 6 A few months later, the trustee filed the underlying petition in the probate court to determine distributions pursuant to the court's order in the estate case and section 15-5-201(3)(c), C.R.S. 2021. The trustee reported that her efforts to work with Cole to obtain financial information and determine the amount of his distributions had been unsuccessful.

¶ 7 The probate court held a hearing, at which both the trustee and Cole appeared. The trustee proposed amortizing the trust balance over Cole's life expectancy as determined using the Social Security Administration's actuarial tables, calculating a monthly distribution amount based on the amortization schedule, readjusting the distribution amounts annually based on the trust balance (including any interest), and paying the distributions on a True Link card that Cole could use as he wished.[1] Cole objected, arguing, among other things, that the proposal was contrary to his father's will and wouldn't provide for his needs, including his living expenses, costs relating to his two younger children, his credit card debt, a portable oxygen concentrator, and a new pair of glasses.

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[1] True Link provides reloadable prepaid credit cards that trustees and other fiduciaries can administer on behalf of their beneficiaries.

Cole also asked the judge to recuse herself, alleging that she was biased against him and hadn't been fair to him in the estate case. Finally, he raised other concerns relating to trust accountings and family photos he said he hadn't received.

¶ 8 The court announced its oral ruling at the hearing and followed up with a written order entered on January 30, 2020. The court denied the recusal request, adopted the trustee's proposal on distributions, and ordered the trustee to file a notice of calculation for the following year. However, the court ordered that Cole could request and the trustee could authorize an additional distribution for a portable oxygen concentrator if Cole provided documents showing the United States Department of Veterans Affairs (from which he received medical benefits) wouldn't pay for one. The court also ordered that Cole could seek a distribution for transcripts if he consulted with an attorney (which the trust would pay for) and the attorney determined he could still appeal any issues from the estate case. But the court ordered that Cole couldn't obtain a distribution to purchase new glasses but would have to pay for them out of his monthly distributions. As to the other issues Cole had raised, the court noted that the trustee had filed an accounting a few days

before (which the trustee indicated she had already mailed to Cole and could also email to him) and directed the trustee to deliver the family photos (most of which she had brought to the hearing) to Cole's residence.

¶ 9 In early February 2020, the trustee filed a notice of calculation of the monthly distributions for 2020 in accordance with the court's January 30, 2020 order. Based on the trust's year-end balance for 2019 ($200,138.93) and Cole's anticipated life expectancy under the actuarial tables (21.3 years), the trustee calculated the monthly distributions at $783.00. ($200,138.93 divided by 21.3 years divided by 12 months = $783.02, rounded to $783.00.) Cole didn't file any response or objection. The court approved the notice in an order entered March 13, 2020.

¶ 10 After seeking and obtaining an extension of time to file a notice of appeal, Cole filed his notice of appeal on June 5, 2020.

II. Analysis

¶ 11 Cole raises four issues on appeal: (1) the probate court judge is biased against him and violated the Colorado Code of Judicial Conduct; (2) the probate court's rulings in the estate case and in this trust case deprived him of the benefit of his inheritance from

his father; (3) the probate court erroneously denied his requests to receive accountings from the trust, family photos, and funds he needs for his own necessities (including an oxygen machine and new glasses) and for the care of his two younger children; and (4) the probate court's rulings deprived him of his constitutional rights.

¶ 12 It appears to us that we lack jurisdiction to consider any of these issues. *See Chavez v. Chavez*, 2020 COA 70, ¶ 22 ("[a]n appellate court must always be satisfied that it has jurisdiction to hear an appeal" and "has no authority to expand its jurisdiction").

¶ 13 Certainly, Cole's appeal of any issues arising out of the estate case is untimely, as Cole didn't file a timely appeal in that case. *See People in Interest of B.H.*, 2022 COA 9, ¶ 8 ("The timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review."); C.A.R. 4(a) (establishing a forty-nine-day deadline from the date of entry of the order or judgment being appealed to file a notice of appeal in most civil cases, and providing that the appellate court may extend this deadline "for a period not to exceed 35 days" upon a showing of excusable neglect).

¶ 14 Cole also didn't file a timely appeal of the probate court's January 30, 2020 order. Even with the maximum thirty-five-day extension under C.A.R. 4(a), the latest Cole could have timely filed a notice of appeal from that order would have been April 23, 2020 (January 30 + 49 days + 35 days). But Cole didn't file his notice of appeal until more than a month later, on June 5, 2020.

¶ 15 Critically, the January 30, 2020 order was the probate court's final order resolving the trustee's petition for instructions, the responsive objections Cole raised at the hearing, and Cole's request for recusal. *See Scott v. Scott*, 136 P.3d 892, 895-96 (Colo. 2006) (in probate cases, as in other civil cases, an order is final if it ends the action and leaves nothing further for the court to do in order to completely determine the rights of the parties as to the proceeding). That order established the method the trustee would use on an annual basis to calculate Cole's distributions. It also, along with the court's earlier oral rulings, resolved the issues Cole had raised concerning other distribution requests, the accountings, the family photos, and the judge's alleged bias. Thus, it was a final order, and to appeal the rulings made final in that order, Cole needed to file a timely appeal. *See Marks v. Gessler*, 2013 COA 115, ¶ 14 (the

notice of appeal deadline runs from the entry of a final order or judgment). But, as we have explained, he didn't do so.

¶ 16 And, while Cole did file a timely appeal of the probate court's March 13, 2020 order approving the trustee's calculation of the monthly distributions for 2020, that was merely a ministerial order following the method the court had previously established for calculating distributions. Thus, even if any errors in those calculations might be reviewable in an appeal, the court's approval of the calculations couldn't revive an untimely appeal of the issues the court had already resolved in the earlier January 30, 2020 order. *See In re Marriage of Roddy*, 2014 COA 96, ¶ 10 (a party can't use a timely appeal from one order "as a means to revive an untimely appeal from" an earlier final order); *see generally* 15B Charles A. Wright et al., *Federal Practice and Procedure* § 3916, Westlaw (2d ed. database updated Apr. 2021) ("The finality of many postjudgment orders should not be allowed to obscure the rule that appeal from a postjudgment order does not revive a lost opportunity to appeal the judgment or earlier postjudgment orders. Appeal is limited to new questions raised by the postjudgment order itself . . . .").

¶ 17 Finally, Cole didn't file any objections to the trustee's notice calculating the 2020 monthly distributions. Accordingly, any challenge to the probate court's order approving those calculations isn't preserved. *See Rinker v. Colina-Lee*, 2019 COA 45, ¶¶ 22, 25 ("[w]e do not review issues that have been insufficiently preserved" and, "[a]s a general rule, a party must make a timely and specific objection or request for relief in the district court to preserve an issue for appeal").

¶ 18 But, even assuming that we had jurisdiction to consider Cole's challenges to the court's orders in this trust case, we discern no basis for reversing those orders. Having reviewed the record from the proceedings in this case, we do not perceive any evidence of bias in the probate court's actions toward Cole, and the court's adverse rulings against him are not alone sufficient to establish bias. *See Bocian v. Owners Ins. Co.*, 2020 COA 98, ¶ 23; *see also People in Interest of Strodtman*, 293 P.3d 123, 131 (Colo. App. 2011) (to

establish bias based on a judge's comments, questions, and demeanor, such bias must be clearly established in the record).[2]

¶ 19 Moreover, the probate court reviewed the trustee's request for instruction, as allowed by section 15-5-201(3)(c), and acted within its discretion in adopting the trustee's proposed distribution plan, determining which of Cole's stated needs might justify additional distributions, and deciding other matters concerning the trust accountings and family photos. *See Cannady v. Price*, 926 P.2d 191, 193 (Colo. App. 1996) (the probate court has discretion to determine matters of trust administration brought before it); *Colo. Nat'l Bank v. Cavanaugh*, 42 Colo. App. 353, 356, 597 P.2d 1049, 1051 (1979) (same); *see also Ferraro v. Frias Drywall, LLC*, 2019 COA 123, ¶ 10 (a court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair or misapplies the law).

¶ 20 Finally, Cole hasn't established any constitutional deprivation. He doesn't have a property interest in the undistributed funds from the trust. *See In re Marriage of Guinn*, 93 P.3d 568, 571 (Colo. App.

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[2] Matters of judicial discipline are also beyond the purview of this court. *See In re Kamada*, 2020 CO 83, ¶ 13 (the Colorado Constitution entrusts such matters to the Colorado Commission on Judicial Discipline and, ultimately, to the supreme court).

2004) ("When a trust permits trustees to distribute to a beneficiary so much, if any, of income as they in their discretion see fit, a beneficiary has no property interest or rights in the undistributed funds."). And, even if he had shown a deprivation of any property interest, he received adequate process — notice and a hearing — concerning those issues. *See Delta Cnty. Mem'l Hosp. v. Indus. Claim Appeals Off.*, 2021 COA 84, ¶ 28 ("The fundamental requisites of due process are notice and the opportunity to be heard." (quoting *Franz v. Indus. Claim Appeals Off.*, 250 P.3d 755, 758 (Colo. App. 2010))).

III. Conclusion

¶ 21 The order is affirmed.

JUDGE J. JONES and JUDGE LIPINSKY concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

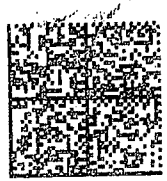
Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: The Colorado Bar Association provides free volunteer attorneys in a small number of appellate cases. If you are representing yourself and meet the CBA low income qualifications, you may apply to the CBA to see if your case may be chosen for a free lawyer. Self-represented parties who are interested should visit the Appellate Pro Bono Program page at* ***http://www.cobar.org/appellate-pro-bono



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APPENDIX B

APPENDIX B Decision of the State Trial Court, 2019-PR-31334, dated "March 11, 2020."

DISTRICT COURT, DENVER (PROBATE) COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, ROOM 230, DENVER, CO, 80202	DATE FILED: March 13, 2020 2:48 PM
In the Matter of the Trust: TRUST FOR DEREK WINDELL COLE	⚠ **COURT USE ONLY** ⚠ Case Number: 2019PR31334 Division: 1 Courtroom:

Order re: Notice of Calculation of Monthly Distribution

The motion/proposed order attached hereto: APPROVED.

UPON REVIEW, the Court finds the beneficiary has not filed any response or objection to the Notice of Calculation of Monthly Distribution. The Court finds the calculation is in accord with the discussion held on the record January 27, 2020 and hereby APPROVES the monthly distribution.

Issue Date: 3/13/2020

Elizabeth D. Leith

ELIZABETH DEMBERG LEITH
District Court Judge

Appendix B

APPENDIX C

APPENDIX C Decision of the State Supreme Court Denying Review, 2022-SC-259 (Unpublished),bated "September 26, 2022."

Colorado Supreme Court
2 East 14th Avenue
Denver CO 80203 United States

DEREK W. COLE
21968 EAST PRINCETON DRIVE
AURORA CO 80018

1-139-1002

To: Derek W. Cole

Subject: Service of documents in 2022SC259.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Supreme Court
- Case Number: 2022SC259

- Filing ID: N/A
- Filed Document Title(s):
  - ORDER OF COURT
- Submitted on Date/Time: Mon Sep 26 18:30:06 MDT 2022
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Supreme Court

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judical Branch website http://www.courts.state.co.us/Index.cfm.

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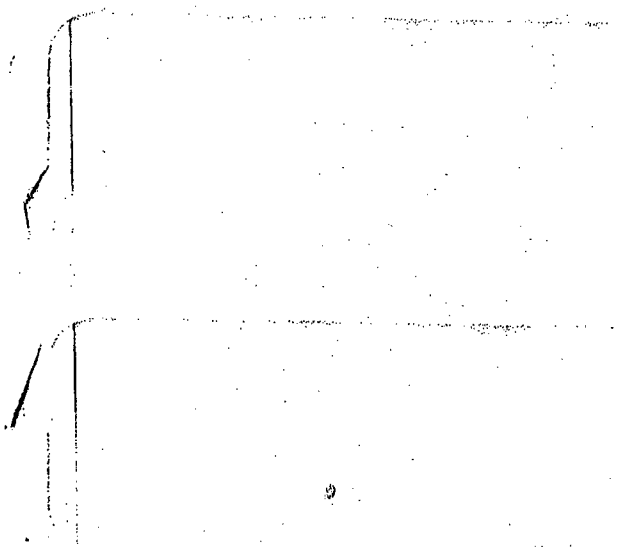
Appendix C

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 26, 2022
Certiorari to the Court of Appeals, 2020CA842 City and County of Denver Probate Court, 2019PR31334	
In re the matter of Derek Windell Cole Trust, **Petitioner:** Derek W. Cole, **v.** **Respondent:** Marcie R. McMinimee, in her capacity as Trustee of the Derek Windell Cole Trust.	Supreme Court Case No: 2022SC259
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, SEPTEMBER 26, 2022.



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80018$3121 R013

APPENDIX D

APPENDIX D Order the State Supreme Court Denying Rehearing None, as Colo. R. App. P. 54 states the following (*verbatim*, with *emphasis* added):

Rule 54 - Order Granting or Denying Certiorari

(a) Grant of Writ. Whenever a petition for writ of certiorari to review a decision of any court is granted, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. The order will direct that the certified transcript of record on file be treated as though sent up in response to a formal writ. A formal writ will not issue unless specially directed.

(b) Denial of Writ. No mandate will issue upon the denial of a petition for writ of certiorari. Whenever the court denies a petition for writ of certiorari, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. If, after granting the writ, the court later denies the same as having been improvidently granted or renders decision by opinion of the court on the merits of the writ, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40. *No petition for rehearing may be filed after the issuance of an order denying a petition for writ of certiorari*.

[Source (as of February 22, 3023):
http://www.lexisnexis.com/hottopics/colorado/]

Colo. R. App. P. 54

Rule 54 - Order Granting or Denying Certiorari

(a)Grant of Writ. Whenever a petition for writ of certiorari to review a decision of any court is granted, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. The order will direct that the certified transcript of record on file be treated as though sent up in response to a formal writ. A formal writ will not issue unless specially directed.

(b)Denial of Writ. No mandate will issue upon the denial of a petition for writ of certiorari. Whenever the court denies a petition for writ of certiorari, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. If, after granting the writ, the court later denies the same as having been improvidently granted or renders decision by opinion of the court on the merits of the writ, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40. No petition for rehearing may be filed after the issuance of an order denying a petition for writ of certiorari.

C.A.R. 54

Amended and adopted June 7, 2018, effective 7/1/2018.

Annotation Law reviews. For article. "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005). Review by certiorari constitutes appellate review under the Colorado constitution. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976). The denial of a petition for certiorari is "appellate review" as that term is used in the Colorado constitution. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970). Petition for certiorari is addressed to sound judicial discretion, and denial does not constitute a determination of the issues on the merits. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976). Denial of a petition for certiorari in a criminal case means nothing more than that the supreme court has declared that the case is not properly postured for further appellate review. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

Appendix D

APPENDIX E

APPENDIX E Order the State Court of Appeals Denying Rehearing, dated "March 17, 2022."

Colorado Court of Appeals
2 East 14th Avenue
Denver CO 80203 United States

DEREK W COLE
21968 EAST PRINCETON DRIVE
AURORA CO 80018

1-261-1009

To: Derek W Cole

Subject: Service of documents in 2020CA842.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Court of Appeals
- Case Number: 2020CA842
- Filing ID: N/A
- Filed Document Title(s):
  - ORDER DENYING PETITION FOR REHEARING
- Submitted on Date/Time: Thu Mar 17 18:30:08 MDT 2022
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Court of Appeals

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judical Branch website http://www.courts.state.co.us/Index.cfm.

Appendix E

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 17, 2022
Denver Probate Court 2019PR31334	
In the Matter of: Trust for Derek Windell Cole, **Appellant:**	Court of Appeals Case Number: 2020CA842
Derek W Cole, **v.** **Appellee:** Marcie R McMinimee, Trustee of the Trust for Derek Windell Cole.	
ORDER DENYING PETITION FOR REHEARING	

The **PETITION FOR REHEARING** filed in this appeal by:

Derek Windell Cole, Appellant,

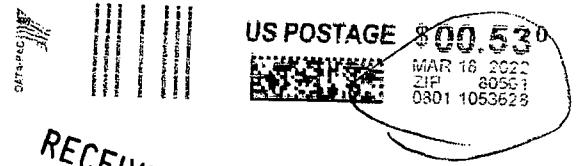
is **DENIED.**

Issuance of the Mandate is stayed until: April 15, 2022

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

DATE: March 17, 2022

BY THE COURT:
J. Jones, J.
Lipinsky, J.
Gomez, J.



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80016@3121 R013

APPENDIX F

APPENDIX F *In the Matter of Derek W. Cole, Appellant, v. Marcie R. McMinimee*, Appellee, in her capacity as Trustee of the Derek Windell Cole Trust., Respondent, **2022-CA-1396,** Colorado Court of Appeals, Denver, State of Colorado. (Filed on: **August 22, 2022**)

Colorado Court of Appeals
2 East 14th Avenue
Denver CO 80203 United States

DEREK WINDELL COLE
21968 EAST PRINCETON DRIVE
AURORA CO 80018

1-62-1016

To: Derek Windell Cole

Subject: Service of documents in 2022CA1396.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Court of Appeals
- Case Number: 2022CA1396
- Filing ID: N/A
- Filed Document Title(s):
  - Order for extension of time for Opening Brief
- Submitted on Date/Time: Mon Dec 05 18:30:06 MST 2022
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Court of Appeals

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judical Branch website http://www.courts.state.co.us/Index.cfm.

Appendix F

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 5, 2022
Denver Probate Court 2019PR31334	
In the Matter of: Trust of Derek Windell Cole, Appellant: Derek Windell Cole, v. Appellee: Marcie R McMinimee, in her capacity as Trustee of the Derek Windell Cole Trust.	⚠ COURT USE ONLY ⚠ Case Number: 2022CA1396

Order for extension of time for Opening Brief

GRANTED.

The Opening Brief is now due 02/03/2023 with no further extensions

Issue 12/5/2022

BY THE COURT

APPELLANT'S/TRUST BENEFICIARY'S (NO "CONFER" RESPONSE(S) RECEIVED) MOTION -- FOR "*GOOD CAUSE*" SHOWN – FOR A 35-DAY EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203 Denver Probate Court **2019PR31334** FILED IN THE COURT of APPEALS STATE OF COLORADO DEC - 2 2022 Clerk, Court of Appeals	GRANTED ~~DENIED~~ 12/5, 2022 THE OPENING BRIEF IS NOW DUE 02/03/2023 WITH NO FURTHER EXTENSIONS By the Court Colorado Court of Appeals **FOR COURT USE ONLY**
In the Matter of: **Trust of Derek Windell Cole,** **Appellant:** Derek Windell Cole (*Pro se*) **v.** **Appellee:** Marcie R. McMinimee, in her capacity as Trustee of the Derek Windell Cole Trust.	Court of Appeals Case Number: 22 ~~2020~~-CA-1396
(***Pro se***) Party Without an Attorney: **Derek W. Cole (*Pro se*)** **21968 East Princeton Drive** **Aurora, CO 80018** Phone: **(720) 309-0490 (*Pro se*)** E-mail: **attydwcole@gmail.com (*Pro se*)** FAX Number: **None (*Pro se*)** Atty. Reg. #: **14761 (*Pro se*)**	

APPELLANT'S/TRUST BENEFICIARY'S (NO "CONFER" RESPONSE(S) RECEIVED) MOTION -- FOR "*GOOD CAUSE*" SHOWN – FOR A 35-DAY EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

APPELLANT'S/TRUST BENEFICIARY'S (NO "CONFER" RESPONSE(S) RECEIVED) MOTION -- FOR "*GOOD CAUSE*" SHOWN – FOR A 35-DAY EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

CERTIFICATION(S) AND ("VICTIM IMPACT") NOTICE UNDER:

Paragraph 8 ("Duty to Confer"), Section 1-15 ("Determination of Motions"), Chapter 17A ("Practice Standards and Local Court Rules"), Rule 121 ("Local Rules - Statewide Practice Standards"), Colorado Rules of Civil Procedure ("C.R.C.P."):

1. **Appellant's Exhibit (1) "documents" Appellant's** efforts to confer – with **all** counsel, **all** "**Interested Persons**," and **all** "**Interested Parties**" -- **before** filing this pleading.

2. The undersigned '**certifies**' that, before filing this pleading, he received (**absolutely**) **no** responses – **from any attorney, nor any "interested parties/persons"** – to the extension motion set forth herein.

---

3. As "**beneficiary**," "**heir**," and "**interested person**," **Appellant – for "good cause shown"** – files the motions set forth in the "caption" for this pleading.

4. The "**grounds**" for the motion(s) herein are set forth in Paragraph 5 (below).

5. Because **Appellant** has (**again**) been "**compelled**" to (**further**) "**protect**" his ("**lawful**") "**interests**" in his "**testamentary inheritance**" – now (and simultaneously) with (1) the **United States Supreme Court** (pursuant to **U.S. SUPREME COURT Rule 13** ("**Review on Certiorari; Time for Petitioning,**" on **Colorado Supreme Court Case #: "2022-SC-259**"), and (2) the **Colorado Court of Appeals** (on **Colorado Court of Appeals Case #: 2022-CA-1396**) – Appellant needs additional time to (fully and properly) research and prepare his (**SCOTUS**) **PETITION FOR A WRIT OF CERTIORARI** and (**CO COA**) **OPENING BRIEF**.

6. WHEREFORE, and for the ('**good cause**') '**grounds**' set forth (above) in this motion, **Appellant (*Pro se*), DEREK W. COLE,** respectfully requests that the motion(s) set forth herein be **GRANTED** for **all** of the "**relief**" requested herein.

December 01, 2022

Date

/s/ Derek W. Cole (*Pro Se*)

Derek W. Cole (Atty. Reg. #: **14761**) (***Pro Se***)

21968 Princeton Drive
Aurora, CO 80018
Mobile Phone: **(720) 309-0490**
E-mail: **attydwcole@gmail.com**

APPELLANT'S/TRUST BENEFICIARY'S (NO "CONFER" RESPONSE(S) RECEIVED) MOTION -- FOR "*GOOD CAUSE*" SHOWN – FOR A 35-DAY EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

CERTIFICATE OF SERVICE

The under-signed (hereby) certifies that on **December 2, 2022**, and due to the fact, that, presently, Appellant **does not** have the "**funds**" to mail copies via "First-Class [U.S.] Mail," copies of this pleading were "**served**" – via **e-mail -- on each of the following:**

Recipient	**Relationship to Decedent**	**Address**	**Type of Service***
Marsha L. Mares	Daughter, Heir, and Devisee	2600 Faulkner Drive Midland, TX 79705 Email: **jmjsm4184@yahoo.com**	**E-mail**
Cindy R. Threet, Esq.	Daughter, Heir, Devisee, and (**Former**) PR	Email: **crthreet@gmail.com**	**E-mail**
Carolyn-Jeanette M. Cole	Granddaughter and Devisee	Email: **cmcole09@gmail.com**	**E-mail**
Derek-James M. Cole	Grandson and Devisee	Email: **derekjamescole@gmail.com**	**E-mail**
Kaito N. Cole **Kaito N. Cole**	Grandson(s) and Devisee(s)	Email: **kentacole@yahoo.com** Email: **kncole8@yahoo.com**	**E-mail**
Marcie R. McMinimee	Appellee	Email(s): **mmcminimee@steenrodlaw.com** **mailto:mmcminimee@schwartzattorneys.com**	**E-mail**

APPELLANT'S/TRUST BENEFICIARY'S (NO "CONFER" RESPONSE(S) RECEIVED) MOTION -- FOR "*GOOD CAUSE*" SHOWN – FOR A 35-DAY EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

Date: **December 2, 2022**

DEREK W. COLE (*Pro Se*)

(Plaintiff's Original Signature)

21968 East Princeton Drive

(Street Address)

Aurora, CO 80018

(City, State, ZIP)

(720) 309-0490

(Telephone Number)

Gmail

Derek W. Cole <attydwcole@gmail.com>

RE: REQUEST TO CONFER

Derek W. Cole <attydwcole@gmail.com> Tue, Nov 29, 2022 at 1:56 PM
To: Melissa Schwartz <mschwartz@schwartzattorneys.com>, Melissa Schwartz <mschwartz@steenrodlaw.com>, "Marcie R. McMinimee" <mmcminimee@schwartzattorneys.com>, "Marcie R. McMinimee" <mmcminimee@steenrodlaw.com>, Lindsay Andrew <landrew@schwartzattorneys.com>, Lindsay Andrew <landrew@steenrodlaw.com>
Cc: Joe Hartwig <jhartwig@schwartzattorneys.com>, Shelby Martin <smartin@schwartzattorneys.com>, Brandon Maggiore <bmaggiore@steenrodlaw.com>, Emily McDaniel <emcdaniel@schwartzattorneys.com>, "Amber J. Marchlowska" <amarchlowska@schwartzattorneys.com>, Bob Steenrod <bsteenrod@steenrodlaw.com>, Freeha Ayala <fayala@schwartzattorneys.com>, Jeffery Sharp <jsharp@schwartzattorneys.com>, Jeffrey Pope <jpope@schwartzattorneys.com>, Joshua Lowenguth <jlowenguth@schwartzattorneys.com>, Cindy Brown <cbrown@schwartzattorneys.com>, dcannon@steenrodlaw.com, Terry Cummings <tcummings@schwartzattorneys.com>, Jamie Hamilton <jhamilton@schwartzattorneys.com>, arodrodriguez@steenrodlaw.com, Glo Aragon <garagon@schwartzattorneys.com>, Pat Wilson <pwilson@schwartzattorneys.com>, Robin Murphy <rmurphy@schwartzattorneys.com>, Zack Schlichting <zschlichting@steenrodlaw.com>, Hayley Lambourn <Hlambourn@steenrodlaw.com>, Paige Armstrong <parmstrong@steenrodlaw.com>, David Imbler <dimbler@steenrodlaw.com>, John Ferguson <jferguson@steenrodlaw.com>, Cindy Threet <crthreet@gmail.com>, Marsha Mares <jmjsm4184@yahoo.com>, "Carolyn M." <cmcole09@gmail.com>, "Derek-James M. Cole" <derekjamescole@gmail.com>, Kenta Cole <kentacole@yahoo.com>, Kaito Cole <kncole8@yahoo.com>, eric@solemlaw.com, Nathan Williams <Nathan@solemlaw.com>, lance@solemlaw.com, peter@solemlaw.com, Zachary Woodward <Zach@solemlaw.com>, jwade@wadeash.com, Herb Tucker <htucker@wadeash.com>, Jody Pilmer <JPilmer@wadeash.com>, zschlichting@wadeash.com, Bridgett LaCombe <blacombe@wadeash.com>, "M. Kent Olsen" <mkolsen@olsentraeger.com>, lursery@goodspeedmerrill.com, RonServis@aol.com, Ronnie Fischer <ronnie@fischeresq.com>, Jennifer Fischer <Jennifer@fischeresq.com>, Jessica Yates <j.yates@csc.state.co.us>, a.mcmurray@csc.state.co.us, e.j.wilder@csc.state.co.us, e.wilder@csc.state.co.us, James Wilder <j.wilder@csc.state.co.us>, Margaret Funk <m.funk@csc.state.co.us>, Kim Pask <k.pask@csc.state.co.us>, James Coyle <j.coyle@csc.state.co.us>, admissions@wsba.org, Amy Michaud <amy.michaud@actec.org>, Chris Richards <chris.richards@actec.org>, Valerie Smith <vsmith@bestlawyers.com>, ratings@martindale.com, david.migoya@gazette.com, newstips@cbs4denver.com, Contact7@thedenverchannel.com, tips@kdvr.com, chris.osher@gazette.com, Jonathan Singer <jonathan.singer@gmail.com>, Caroline Cammack <ccammack773@hotmail.com>, Tony.Kovaleski@thedenverchannel.com, Jennifer <Jennifer.Kovaleski@thedenverchannel.com>, sbradbury@denverpost.com, eschmelzer@denverpost.com, michael.karlik@coloradopolitics.com

NOTICE: This RPC 8.3(a) REPORT OF PROFESSIONAL MISCONDUCT was drafted -- and is being forwarded -- in accordance with the "plain language" and "Comments" of Rule 4.5 ("Threatening Prosecution"), as well as the ("ethics") "requirements" of Rule 8.3 ("Reporting Professional Misconduct"), Rules of Professional Conduct (RPC); which states (respectively, and *verbatim*):

Rule 4.5. Threatening Prosecution:

(a) A lawyer shall not threaten criminal, administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

(b) *It shall not be a violation of Rule 4.5 for a lawyer to notify another person in a civil matter that the lawyer reasonably believes that the other's conduct may violate criminal, administrative or disciplinary rules or statutes.* [Emphasis added.]

Rule 8.3. Reporting Professional Misconduct:

(a) *A lawyer who knows that anoth* **Appellant's Exhibit (1)** ***f. Professional Conduct that raises a subst***

(= 3 pages)

trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. [Emphasis added.]

(b) *A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.* [Emphasis added.]

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of a lawyers' peer assistance program that has been approved by the Colorado Supreme Court initially or upon renewal, to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

(Source: https://link.edgepilot.com/s/cf1ff27e/iu4Ddx6gL0i-UAWPT77Khg?u=http://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct, at 1345 Hrs, Tuesday, November 29, 2022.)

****

Attorneys McMinimee, Schwartz, and Andrew:

1. Because I have (**again**) been "**forced**,, to (**further** and **actively**) "**protect**,, my (**lawful**) "**interests**,, in my

"**testamentary inheritance**,, (**now**, and **simultaneously**, to **both** the **United States Supreme Court** and the **Colorado**

Court of Appeals), please accept this "**Request to Confer**" -- under **Paragraph 8** ("**Duty to Confer**"), **Section 1- 15**

"**Determination of Motions**"), **Chapter 17A** ("**Practice Standards and Local Court Rules**"), **Rule 121** ("**Local Rules - Statewide Practice Standards**"), **Colorado Rules of Civil Procedure** (**C.R.C.P.**)) -- **before** I (**timely**) file the following

motion(s) with the **Colorado Court of Appeals**:

(APPELLANT'S/TRUST BENEFICIARY'S) MOTION - FOR "*GOOD CAUSE*" SHOWN - - FOR A 35-DAY

EXTENSION OF TIME TO FILE (APPELLANT'S/TRUST BENEFICIARY'S) OPENING BRIEF

2. As "**partners**" who are (**both**) "**liable**" and "**responsible**" for your law firm's "**actions**" -- **and for ("Local Rules")**

"certification" purposes -- please provide me, **ASAP**, with your (**respective**) "positions" to the foregoing (proposed)

motion(s).

Regards,

Derek W. Cole, Esq. (*Pro se*)

B.A. (1980 - English - University of Washington, Seattle, WA)

J.D. (1984 - University of Denver College of Law, Denver, CO)

M.A. (1996 - "National Security & Strategic Studies" - U.S. Naval War College, Newport, RI)

Lieutenant Commander (LCDR)
Judge Advocate General's Corps (JAGC)
United States Navy (USN)
(("Permanent") Navy/VA (Medical) "Disability Retired"

Home Address: 21968 E. Princeton Drive
Aurora, CO 80010

Office: None

Cell Phone: (720) 309-0490

"I have not yet begun to fight!" **~ John Paul Jones (1779)**

"Cry 'Havoc!,' and let slip the dogs of war." [As spoken by **Mark Antony** in **Shakespeare's *Julius Caesar*, Act 3, Scene 1, line 273)]**

"The most dangerous creation of any society is the man who has nothing to lose." - James Baldwin

On Mon, Oct 17, 2022 at 4:01 PM Derek W. Cole <attydwcole@gmail.com> wrote:

> **NOTICE: This RPC 8.3(a) REPORT OF PROFESSIONAL MISCONDUCT was drafted -- and is being forwarded --**
>
> **in accordance with the "plain language" and "Comments" of Rule 4.5 ("Threatening Prosecution"), as well as the**

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