

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>Court Address: 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Trial Court: District Court, Pitkin County, State of Colorado Hon. James B. Boyd Case No.: 09-CV-294</p>	
<p><b>Plaintiff-Appellant:</b> MARILYN MARKS, a resident of the City of Aspen, Colorado v. <b>Defendant-Appellee:</b> KATHRYN KOCH, City Clerk of the City of Aspen, Colorado</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorney for Plaintiff-Appellant: Robert A. McGuire ROBERT A. MCGUIRE, ATT'Y AT LAW, LLC 1624 Market Street, Suite 202 Denver, Colorado 80202 Phone Number: 303-734-7175 FAX Number: 303-734-7166 E-mail: ram@lawram.com Atty. Reg. #: 37134</p>	<p>Case Number:</p>
<p><b>NOTICE OF APPEAL</b></p>	

Plaintiff-Appellant Marilyn Marks, by and through her undersigned counsel, respectfully submits this Notice of Appeal pursuant to C.A.R. 3(d).

**I. Nature of the Case.**

**A. Nature of the controversy.**

This case concerns the public's right to inspect public records under the Colorado Open Records Act ("CORA"), §§ 24-72-100.1 to -502, C.R.S. The Plaintiff-Appellant, Marilyn Marks, initiated the underlying civil action on October 8, 2009, after the Defendant-Appellee, Aspen City Clerk Kathryn Koch, denied Ms. Marks's CORA request to inspect 2,544 tagged image file format ("TIFF") computer files containing scanned images of anonymous paper ballots that were cast in the City of Aspen's May 2009 municipal election. The underlying CORA action sought access to the TIFF files and an award of attorney fees under Section 24-72-204(5), C.R.S.

**B. Judgment and orders being appealed and the basis for this Court's jurisdiction.**

This appeal is from the trial court's written order entered on March 10, 2010, granting the Defendant-Appellee's C.R.C.P. 12(b)(5) motion and dismissing the Plaintiff-Appellant's CORA action, and from the trial court's denial of the Plaintiff-Appellant's C.R.C.P. 59(a)(4) motion for amendment of judgment, which was deemed to have occurred on May 24, 2010, pursuant to C.R.C.P. 59(j).

**C. Whether the judgment or orders appealed from resolved all issues pending before the trial court including attorneys' fees and costs.**

The order granting the Defendant-Appellee's C.R.C.P. 12(b)(5) motion and dismissing the Plaintiff-Appellant's CORA action resolved all the claims of the parties on the merits. The Defendant-Appellee's motion for attorney fees and costs pursuant to Sections 24-72-204(5) and 13-17-102(4),C.R.S., remains pending in the trial court.

**D. Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b).**

No certification pursuant to C.R.C.P. 54(b) was necessary because the judgment dismissing the Plaintiff-Appellant's CORA action addressed all claims on the merits.

**E. The date the judgment or order was entered and the date of mailing to counsel.**

1. The written order granting the Defendant-Appellee's C.R.C.P. 12(b)(5) motion and dismissing the Plaintiff-Appellant's CORA action is signed and dated March 10, 2010. This order was served on counsel via Lexis-Nexis File and Serve on March 10, 2010.

2. The Plaintiff-Appellant's C.R.C.P. 59(a)(4) motion for amendment of judgment was not decided within the 60-day determination period

that began on March 24, 2010, and was therefore deemed denied on May 24, 2010, pursuant to C.R.C.P. 59(j). Accordingly, no order was entered or mailed to counsel.

**F. Whether there were any extensions granted to file any motions for post-trial relief.**

No extensions to file any motions for post-trial relief were granted.

**G. The date any motion for post-trial relief was filed.**

The Plaintiff-Appellant's C.R.C.P. 59(a)(4) motion for amendment of judgment was filed in the trial court on March 24, 2010.

**H. The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j)**

The Plaintiff-Appellant's C.R.C.P. 59(a)(4) motion was deemed denied pursuant to C.R.C.P. 59(j) on May 24, 2010.

**I. Whether there were any extensions granted to file any notice of appeal.**

No extensions to file any notice of appeal were granted.

**II. Advisory listing of issues to be raised on appeal.**

1. Whether Article VII, Section 8, of the Colorado Constitution is violated as a matter of law by the public inspection of anonymous copies of anonymous ballots.

2. Whether the storage and preservation requirements that apply to actual ballots under Section 31-10-616(1), C.R.S., also apply to electronic copies of original paper ballots.

3. Whether Section 31-10-616(1), C.R.S., establishes an exception to the public's right of inspection under CORA.

### **III. Necessity of transcripts.**

Transcripts of the following proceedings are necessary to resolve the issues raised on appeal:

1. Status conference held on October 16, 2009. The court reporter is Sheila Schiesser. The length of this transcript is 17 pages.

2. Pretrial conference held on January 8, 2010. The court reporter is Sheila Schiesser. The length of this transcript is 21 pages.

3. Case management conference held on January 28, 2010. The court reporter is Sheila Schiesser. The length of this transcript is 17 pages.

4. Status conference held February 18, 2010. The court reporter is Sheila Schiesser. The length of this transcript is 11 pages.

5. Status conference held March 8, 2010. The court reporter is Sheila Schiesser. The length of this transcript is 25 pages.

**IV. Preargument conference.**

Appellant does not request a preargument conference but is willing to participate if the Court determines it may be useful.

**V. Counsel for the parties.**

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**VI. Appendix contents.**

The attached appendix contains the following:

1. Trial court's Order on Pending Motions granting the Defendant-Appellee's C.R.C.P. 12(b)(5) motion and dismissing the Plaintiff-Appellant's CORA action, entered on March 10, 2010.

2. Plaintiff-Appellant's C.R.C.P. 59(a)(4) motion for amendment of judgment, dated and filed with the trial court on March 24, 2010.

Respectfully submitted this 1st day of June, 2010.

By: S/ Robert A. McGuire  
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A PRINTED OR PRINTABLE COPY OF THIS E-FILED DOCUMENT WITH ORIGINAL OR SCANNED SIGNATURES IS MAINTAINED BY COUNSEL FOR THE FILING PARTY AS REQUIRED BY C.A.R. 30(F).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of June, 2010, I served a true and correct copy of the foregoing **NOTICE OF APPEAL**, with all attachments, by the method indicated below to each of the following:

<b><u>Person Served:</u></b>	<b><u>Address:</u></b>	<b><u>Method of Service:</u></b>
Carolyn Jemison Clerk of the Court Pitkin Co. Dist. Ct.	Pitkin Co. District Court 506 E. Main, Suite E Aspen, Colorado 81611 carolyn.jemison @judicial.state.co.us	LexisNexis File & Serve. First Class Mail. Email.
John Worcester Counsel for Appellee	City Attorney City of Aspen, Colorado 130 S Galena Aspen, Colorado 81611	LexisNexis File & Serve.
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*S/ Robert A. McGuire*