

reimbursed for its actual and reasonable expenses for maintenance, repair and operation of the plan.” Order at 8.

On March 30, 2015, IMC filed a Motion for Post-Trial Relief. In the Post-Trial Motion, IMC “acknowledge[d] the Court’s conclusion that IMC may not charge for *use* of the water rights.” Post-Trial Motion at 2 (emphasis in original). However “IMC ask[ed] the Court to consider additional findings and an amended judgment limited to the *operation and maintenance* services IMC has provided...[f]rom the 1970’s to 2013.” Post-Trial Motion at 2 (emphasis in original).

On May 6, 2015, the Court denied IMC’s Post-Trial Motion. The Court found that:

Plaintiff failed to meet its burden of proof regarding the ‘actual and reasonable expenses’ incurred in 2012 and 2013. Furthermore, at trial Plaintiff did not seek payment for such expenses for prior years [1970’s to 2012], and failed to meet its burden of proof regarding such claimed expenses.

Order, May 6, 2015, at 1 (emphasis added).

On or about August 11, 2015, IMC sent approximately 2,200 Invoices and Letters to lot owners within the Indian Mountain Subdivision. The Letters and Invoices demanded payment of \$1,000, per lot, including post-judgment interest, for services rendered by IMC from the 1970’s to 2012 “[a]s a result of the Court’s order finding that IMC is entitled to be reimbursed for its maintenance, repair and operation of the augmentation plan.” Letters and Invoices at 3.

On August 19, 2015, IMMD submitted a Verified Motion for Show Cause Order Regarding Criminal Contempt of Court Under C.R.C.P. 107(c) and Request for *Ex Parte* Consideration (“Verified Motion”) (August 19, 2014), which included the Letter and Invoice received by IMMD as Exhibit 1 to the Verified Motion. The Verified Motion requested that the Court issue a citation *ex parte* to James Ingalls, as the sole owner and shareholder of IMC, directing him to appear and show cause why he should not be punished for indirect criminal contempt for sending the Letters and Invoices. Verified Motion at 4. The Verified Motion stated IMC’s Letters and Invoices “falsely represent that IMC prevailed in the above captioned action; that IMC obtained a judgment, including statutory interest, from this Court; and that, as a result of this judgment, the residents of Indian Mountain are under an existing obligation of this Court to pay money to IMC” and concluded that “IMC’s false representations: (1) contradict the Orders of this Court; and (2) implicate the Orders of this Court in a fraud upon the public.” Verified Motion at 3.

On August 20, 2015, the Court issued a Show Cause Order to Mr. Ingalls and directed him to appear before the Court at 9:00 am on September 9, 2015, to show cause why he should not be punished for indirect criminal contempt.

On August 21, 2015, IMC filed a Motion for Reconsideration and Request for Reassignment and Resetting in Accordance with C.R.C.P. 107(c) (“Request”). The Request was

not verified or supported by an affidavit. Further, the Request did not contest any of the specific allegations in the Verified Motion or the Order to Show Cause and Citation.

IMMD respectfully requests that the Court deny IMC's Request and proceed with the show cause hearing as ordered.

I. IMC DOES NOT HAVE ANY RIGHT TO RESPOND TO A C.R.C.P. 107(d) ORDER PRIOR TO HEARING

IMC requests that "the Court hold its Show Cause Order in abeyance and set a truncated briefing schedule for IMC to file its Response and IMMD its Reply." Request at 4. IMC argues that "the Court granted IMMD's Show Cause Motion less than 24 hours after it was filed, proving IMC, and James Ingalls personally, no opportunity to respond to the allegations leveled against them." Request at 1. Further, IMC argues that IMMD has not made a *prima facie* showing that Mr. Ingalls violated the Court's March 16 Order. Request at 2. These arguments, however, are misplaced.

IMC's first argument misunderstands the purpose of a show cause hearing. Under Rule 107(c), Mr. Ingalls is "to appear and show cause at [the] date, time and place designated why [he] should not be punished." At the show cause hearing, Mr. Ingalls may respond to the allegations leveled against him, and raise any defense he desires. Therefore, Mr. Ingalls has not, and will not, be denied an "opportunity to respond."

Rule 107 specifically provides that "[w]hen it appears to the court by motion supported by affidavit that indirect contempt has been committed, the court may proceed *ex parte* to order a citation." C.R.C.P. 107(c). Thus, no response is required or even contemplated under the Rule. Therefore, IMC has not identified a legitimate reason to hold the show cause hearing in abeyance to afford Mr. Ingalls a truncated briefing schedule.

IMC's second argument is pitched against the wrong legal standard. Under Rule 107, IMMD was required to make a *prima facie* showing that Mr. Ingalls had committed an indirect criminal contempt of court. C.R.C.P. 107(c). An Indirect criminal contempt is an act, occurring outside the view of the Court, that disrespects the Court or its process, obstructs the administration of justice, or tends to bring the Court into disrepute. *See People ex rel. Attorney General v. News-Times Pub. Co.*, 84 P. 912, 956 (Colo. 1906).

In the Verified Motion, IMMD submitted evidence that IMC had mailed approximately 2,200 Letters and Invoices to the lot owners within the Indian Mountain Subdivision demanding payment for services rendered from the 1970's until 2012 "as a result the Court's Order," despite the fact that the Court expressly denied IMC's claims for these services in both its Order and Post-Trial Order. *See* Verified Motion at 2-3; *see also id.* Ex. 1. Based on this evidence, the Court could find that Mr. Ingalls has disrespected the Court or its process, obstructed the administration of justice, or brought the court into disrepute. Accordingly, the Court concluded that IMMD had made a *prima facie* showing of indirect criminal contempt, and ordered the show cause hearing. *See* Show Cause Order ¶ 19.

Contrary to IMC's argument, IMMD was not required to make a *prima facie* showing that Mr. Ingalls had violated an order of the Court. *See* Request at 2. Moreover, the alleged-

exculpatory evidence pointed to by IMC is immaterial for the purposes of a *prima facie* case. *See* Request at 3-4. At the hearing, Mr. Ingalls will have the opportunity to appear and attempt to explain why the Letters and Invoices do not misrepresent the Court's Orders or constitute a fraud against the public. Mr. Ingalls may advance the alleged-exculpatory evidence then. *See* Request at 2-3. This alleged evidence, however, does not present any legitimate reason why the show cause hearing should be held in abeyance to afford Mr. Ingalls a truncated briefing schedule. Therefore, IMC's Motion should be denied.

II. THE COURT IS NOT REQUIRED TO RESET THE SHOW CAUSE HEARING

IMC argues that the Court should reset the show cause hearing in order to allow Mr. Ingalls "the full 21 days to prepare his defense to IMMD's allegations." Request at 5. This relief, however, is unnecessary.

Rule 107(c) states that "[t]he citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear." Rule 5(b)(1) provides that "[s]ervice...on a party represented by an attorney is made upon the attorney unless the court orders personal service on the party."

Here, IMC was served with a copy of the Verified Motion and Proposed Order and Citation through its attorney via ICCES 21 days prior to hearing. Therefore, the dictates of Rule 107 have been satisfied. The Proposed Order did propose that, in addition, Mr. Ingalls should be personally served at least 21 days before the hearing. But this is not a requirement of Rule 107; instead, as Rule 5(b)(1) makes clear, whether or not to require this additional service is within the discretion of the trial judge. Since the issuance of the Order and Citation, Mr. Ingalls has been personally served with copies of the Verified Motion and Show Cause Order and Citation.¹ Although the Court is aware of the deadline Mr. Ingalls imposed on the Lot Owners in the Invoices and Letters, to the extent the Court desires, it is certainly in its discretion to reset the show cause hearing to allow 21 days from the date of personal service; but, contrary to IMC's argument, this is not mandated by Rule 107.

Moreover, and in any event, the particular language relied on by IMC must be viewed through the judicial gloss of *Harthun v. District Court*, 495 P.2d 539 (Colo. 1972). In *Harthun*, the Colorado Supreme Court held that the notice provision of Rule 107 requires only "[a] procedure which accords with due process of law." *Id.* at 541. Therefore, the person accused of contempt must "receive[] notice sufficient to enable him either to defend or explain in mitigation his absence from the court." *Id.* at 542. IMC does not offer any reason why Mr. Ingalls will be unable to prepare a defense by September 9, 2015. Instead, IMC asserts only that "Mr. Ingalls will be returning to Colorado on September 9 from family matters outside the state." Request at 5. However, as the return of service on file with the Court shows, Mr. Ingalls was within the jurisdiction of Colorado as of August 23, 2015. Due process does not require the Court to accommodate Mr. Ingalls' vacation plans. Therefore, IMC's Request should be denied.

¹ Mr. Ingalls was also served with a copy the show cause Order by a process server August 23, 2015 and a return of service is in the record.

III. IMC DOES NOT HAVE A RIGHT TO REQUEST REASSIGNMENT TO A DIFFERENT JUDICIAL OFFICER PURSUANT TO C.R.C.P. 107(d)

IMC “requests that the show cause hearing be reassigned to a different judicial official pursuant to C.R.C.P. 107(d).” Request at 2. This relief, however, is unwarranted.

Rule 107 provides that “in an indirect contempt proceeding initiated by a judge, the accused must be informed of her right to have the action heard by another judge.” C.R.C.P. 107(d) (emphasis added). As the Colorado Supreme Court explained in *Harthun*, “the semblance of due process is a sham when the judge is both prosecutor and judge.” *Harthun*, 495 P.2d at 542. But this is not the case here. IMMD initiated these proceedings, not the sitting Judge. As a result, it is entirely appropriate for the sitting Judge to preside over this hearing. Moreover, the sitting Judge is already familiar with the facts of this case, and authored the Orders that form the basis of the contempt hearing. To reassign the show cause hearing to a different judicial officer would be contrary to judicial economy and waste the Court’s resources.

WHEREFORE, IMMD requests the Court to deny IMC’s Request in full.

Respectfully submitted this 26th day of August, 2015

HILL & ROBBINS, P.C.

s/ Matthew A. Montgomery
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of August, 2015, service of the foregoing **RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION, REASSIGNMENT AND RESET** was made ICCES, addressed as follows:

Party Name	Party Type	Attorney Name
Indian Mountain Corp	Plaintiff-Appellant	Adam Charles Davenport (Indian Mountain Corp)

signed original on file at Hill & Robbins, P.C.

s/ Rae Macias

Rae Macias