

ATTORNEY'S FEES OUTLINE
FOR FAMILY LAW CASES

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RULES

Colorado Rules of Civil Procedure Rule 11(a). Obligations of Parties and Attorneys.

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. The initial pleading shall state the current number of his registration issued to him by the Supreme Court. The attorney's address and that of the party shall also be stated. A party who is not represented by an attorney shall sign his pleadings and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with his signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. If a pleading is signed in violation of this Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee, provided, however, that failing to be registered shall be governed by Rule 227.

Reasonable expenses, including a reasonable attorney's fee, shall not be assessed if, after filing, a voluntary dismissal or withdrawal is filed as to any claim, action or defense, within a reasonable time after the attorney or party filing the pleading knew, or reasonably should have known, that he would not prevail on said claim, action, or defense.

Colorado Rules of Civil Procedure Rule 16.2(j) Sanctions.

If a party fails to comply with any of the provisions of this rule, the court may impose appropriate sanctions, which shall not prejudice the party who did comply. If a party attempts to call a witness or introduce an exhibit that the party has not disclosed under subsection (h) of this Rule, the court may exclude that witness or exhibit absent good cause for the omission.

Colorado Rules of Civil Procedure Rule 37(a)(4) Expenses and Sanctions.

(A) If a motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court may, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If a motion is denied, the court may make such protective order as it could have made on a motion filed pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may make such protective order as it could have made on a motion filed

pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Colorado Rules of Civil Procedure Rule 107(d)(2). Remedial Sanctions.

In a contempt proceeding where remedial sanctions may be imposed, the court shall hear and consider the evidence for and against the person charged and it may find the person in contempt and order sanctions. The court shall enter an order in writing or on the record describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged. In all cases of indirect contempt where remedial sanctions are sought, the nature of the sanctions and remedies that may be imposed shall be described in the motion or citation. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed in the discretion of the court. If the contempt consists of the failure to perform an act in the power of the person to perform and the court finds the person has the present ability to perform the act so ordered, the person may be fined or imprisoned until its performance.

Colorado Rules of Civil Procedure Rule 121, 1-22. 2. ATTORNEY FEES.

(a) **Scope.** This practice standard applies to requests for attorney fees made at the conclusion of the action, including attorney fee awards requested pursuant to Section 13-17-102, C.R.S. It also includes awards of fees made to the prevailing party pursuant to a contract or statute where the award is dependent upon the achievement of a successful result in the litigation in which fees are to be awarded and the fees are for services rendered in connection with that litigation. This practice standard does not apply to attorney fees which are part of a judgment for damages and incurred as a result of other proceedings, or for services rendered other than in connection with the proceeding in which judgment is entered. This practice standard also does not apply to requests for attorney fees on matters relating to pre-trial sanctions and motions for default judgment unless otherwise ordered by the court.

(b) Motion and Response. Any party seeking attorney fees under this practice standard shall file and serve a motion for attorney fees within 15 days of entry of judgment or such greater time as the court may allow. The motion shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated. The motion shall be accompanied by any supporting documentation, including materials evidencing the attorney's time spent, the fee agreement between the attorney and client, and the reasonableness of the fees. Any response and reply, including any supporting documentation, shall be filed within the time allowed in practice standard § 1-15. The court may permit discovery on the issue of attorney fees only upon good cause shown when requested by any party.

(c) Hearing; Determination of Motion. Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney fees awarded under this practice standard shall be taxed as costs.

STATUTES

Colorado Revised Statutes §13-17-101

The general assembly recognizes that courts of record of this state have become increasingly burdened with litigation which is straining the judicial system and interfering with the effective administration of civil justice. In response to this problem, the general assembly hereby sets forth provisions for the recovery of attorney fees in courts of record when the bringing or defense of an action, or part thereof (including any claim for exemplary damages), is determined to have

been substantially frivolous, substantially groundless, or substantially vexatious. All courts shall liberally construe the provisions of this article to effectuate substantial justice and comply with the intent set forth in this section.

Colorado Revised Statutes §14-5-313

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 6 of this article, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Colorado Revised Statutes §14-10-102

(1) This article shall be liberally construed and applied to promote its underlying purposes.

(2) Its underlying purposes are:

- (a) To promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (b) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; and
- (c) To make the law of legal dissolution of marriage more effective for dealing with the realities of matrimonial

experience by making an irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Colorado Revised Statutes §14-10-119

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Colorado Revised Statutes §14-10-129(5)

If the court finds that the filing of a motion under subsection (4) of this section was substantially frivolous, substantially groundless, or substantially vexatious, the court shall require the moving party to pay the reasonable and necessary attorney fees and costs of the other party.

Colorado Revised Statutes §14-13-312(1)

The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the prevailing party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

Colorado Revised Statutes §14-13.5-108(4)(b)

Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction

Colorado Revised Statutes §14-13.5-109(7)

If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (1) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorneys fees, costs, and expenses.

Colorado Revised Statutes §19-1-117(3)

No grandparent may file an affidavit seeking an order granting grandchild visitation rights more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such affidavit, it shall allow such additional affidavit to be filed and shall consider it. The court may order reasonable attorney fees to the prevailing party. The court may not make any order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent the opportunity to exercise his grandchild visitation rights.

CASES

I. PURPOSE

Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (Colo. 1962)

Fact Pattern: Husband was ordered to pay wife attorney fees. Husband defaulted on payments. Citation for contempt of court was entered. Husband filed bankruptcy, listing attorney fees as dischargeable debts. Trial court dismissed contempt.

- Allowance of counsel fees intended to put parties on same footing too pursue action
- Same underlying thought as is an allowance to buy food, shelter, and clothing
- Basis same as alimony or other forms of support

In re Jones, 9 F.3d 878 (10th Cir. 1993)

Fact Pattern: After the dissolution of marriage, mother and father shared joint custody of their 2 children. Later, the children lived with their father full-time.

Mother was ordered to pay child support and carry health insurance for the children. Father filed a notice of delinquency and a wage assignment, asserting that Mother was in arrears. Mother then filed a motion to modify custody, which was contested and denied. Mother was ordered to pay all court costs and attorney fees to father. Mother declared bankruptcy.

The bankruptcy court ruled the attorney fees were fully dischargeable. The district court reversed, ruling that attorney's fees are non-dischargeable.

- Best interest of child is inseparable element of the child's support
- Term support should not be read so narrowly as to exclude everything bearing on the welfare of the child but the bare paying of bills on the child's behalf
- Since determination of child custody is essential to child's proper support, attorney's fees incurred should be considered obligations for support

In re Marriage of Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009)

Fact Pattern: The marriage between mother and father was dissolved in 2000, and mother was named the primary residential parent for their only child.

In 2005, mother asked the magistrate to hold father in contempt for failure to pay child support and medical expenses, and sought to garnish his wages. Father objected to the wage assignment and filed a motion to modify child support.

At the hearing, mother presented evidence that she was disabled. Father presented evidence that, beginning on a date after the original decree was entered, mother received monthly Social Security checks of \$559 that paid a benefit on behalf of the child because of mother's disability.

After the hearing, the magistrate issued an order finding that father was in contempt for his failure to pay child support; that he owed mother \$15,323 in child support arrearages; and that the Social Security disability payment that mother received for the child should be considered as mother's income. Finally, the magistrate awarded mother \$5000 in attorney fees for her pursuit of the contempt citation.

After a hearing on remand, at which mother stated that all of the benefit payments were used for the child's needs, the magistrate issued a new order. He found that (1) the disability payments, which had since risen to \$638 per month, were the child's income; (2) this income reduced the child's need for support; (3) father had overpaid his child support obligation by \$8778.20 because of the child's income; and (4) father should be credited with the \$5000 in attorney fees previously awarded to mother. Thus, the magistrate reduced the total amount of child support arrearages payable by father to \$1645.80.

The magistrate also found that mother deliberately did not notify father about the disability payments, thus misleading father about the child's resources; and that mother should not profit from her nondisclosure or deceit. Thus, the magistrate ordered mother to pay father \$1645.80 in attorney fees, which effectively reduced the total amount of arrearages father owed to zero.

The magistrate's order stated that the purpose for crediting the \$5000 in attorney fees previously awarded to mother against father's child support arrearages was the magistrate's " consideration of [mother's] [d]eception." The purpose for awarding father an additional \$1685 in attorney fees was " [a]s a consequence of [mother's] deceit." As articulated, these stated purposes punished mother and the child without considering how the attorney fees awarded to father " apportion[ed] the costs and fees of [the] action equitably between the parties."

- The primary purpose for awarding attorney fees in a marriage dissolution case is to equalize the parties' financial positions
- A trial court may consider a party's actions in initiating unwarranted proceedings when determining whether to award attorney fees
- The award should be primarily based upon the purpose of apportioning the costs and fees of an action equitably between the parties and not as a means of punishing a party

In re Marriage of Barber, 811 P.2d 451 (Colo. App. 1991)

Fact Pattern: According to the Permanent Orders, husband was ordered to pay child support for the 3 minor children plus attorney fees to the mother. Husband was found in contempt for non-payment of child support and attorney fees on five separate occasions and was ordered to pay additional attorney fees and costs to wife for fees incurred by the contempt action. Husband attempted to discharge attorney fees debt in federal bankruptcy court.

The trial court held that attorney fees are non-dischargeable. The Court of Appeals affirmed.

- Appeal of Bankruptcy case re: dischargeability of attorney's fees related to a dissolution of marriage
- Considered in the nature of support and non-dischargeable

In re Marriage of Bregar, 952 P.2d 783 (Colo. App. 1987)

Fact Pattern: At the time of dissolution, husband was ordered to pay \$800 per month in child support. Six years later, wife motioned to increase child support; husband responded that child support should be decreased. In the interim,

husband was fired from the law firm he was working at and began a career as a solo practitioner. Husband also decided to start a cattle-raising operation.

The court found that husband was voluntarily underemployed. The court imputed to him reasonable income as an attorney and a reasonable return on the proceeds from his sale of stock. The court awarded attorney fees to wife after finding that husband's income was nearly twice that of wife's income.

- Attorney fees are to be awarded primarily to equalize the financial positions of the parties

In re Marriage of Hill, 166 P.3d 269 (Colo. App. 2007)

Fact Pattern: The Permanent Orders did not address wife's request for attorney fees, which was raised at the permanent orders hearing.

- Payment of attorney fees is a substantive aspect of a dissolution action, and permanent orders are not final until the court addresses that issue. Unlike statutory and contractual fee-shifting provisions that premise the award of attorney fees on the merits of the claims and a determination of who prevailed in the action, the apportionment of attorney fees in a dissolution action is inextricably intertwined with the other issues to be resolved by the court in determining permanent orders.
- Withdrawal of wife's counsel before determination of attorney fees issue cannot be construed as a waiver by wife regarding payment of the fees.

In re Marriage of Ikeler, 161 P.3d 663 (Colo. 2007)

Fact Pattern: The parties waived attorney's fees in a marital agreement signed shortly before the marriage. The parties were only married for four years at the time the dissolution was filed. Wife gave birth to triplets, who were two years old at the time of the dissolution of marriage. Husband was a successful veterinarian, owning five cat hospitals. Wife was a stay-at-home mother. The trial court determined the marital agreement was unconscionable as to the parties' waiver of spousal maintenance and attorney's fees. The Court of Appeals overturned the award of attorney's fees, stating that attorney's fees were not subject to the same unconscionability analysis as spousal maintenance.

- An award of attorney's fees is one of the tools that the General Assembly provided the courts in order to carry out its stated objective of "mitigat[ing] the potential harm to the spouses and

their children caused by the process of legal dissolution of marriage"

- The public policy interest behind protecting spouses outweigh the parties' rights to freedom of contract
- Awards of spousal maintenance and attorney's fees are based on the same public policy considerations
- A waiver of attorney's fees violates public policy where one spouse lacks the financial resources to litigate the dissolution, and the case involves issues of parental responsibilities and child support
- If one spouse is unable to hire an attorney, and the parties waived a possible award of attorney's fees in a marital agreement, the lesser-earning spouse's ability to effectively litigate the issues related to the children will be substantially impaired. This, in turn, may negatively impact the court's ability to assess the best interests of the children
- Trial court may review a waiver of attorney fees in a marital agreement for unconscionability at the time of dissolution, because an unconscionable waiver violates the public policy interest behind protecting spouses and thus is not a valid contract term under § 14-2-304

In re Marriage of Mitchell, 195 Colo. 399, 579 P.2d 613 (1978)

Fact Pattern: Husband is employed as a teacher for Denver Public Schools. Wife is qualified to teach and is employed as a part-time substitute teacher. She has been diligently searching for a full-time teaching position for the past few years to no avail.

Wife had already paid \$400 in attorney fees. \$750 remained to be paid to wife's attorney. The court ordered husband to pay half of this amount, or \$375.

- Purpose of award to equalize status of parties
- Award based on precarious financial situation due to health and inability to find a job

In re Marriage of Renier, 854 P.2d 1382 (Colo. App. 1993)

Fact Pattern: The trial court improperly traced husband's ownership of stocks and options which caused improper calculations of the parties' marital property. The trial also failed to award maintenance and attorney fees to wife.

The Court of Appeals found that ~~at~~ the time of permanent orders, wife was unemployed, enrolled in school, recovering from surgery, and caring for the parties' two year-old child and two children from a prior marriage. Her only income was \$ 600 per month child support for her children from the prior marriage and \$ 742 per month child support for her child of this marriage. The trial court found that husband's monthly income was \$ 7,450; however, his average adjusted gross income, as reported in his income tax returns for 1986 through 1990, was approximately \$ 10,170 per month. Under these circumstances, on remand, the trial court should reconsider whether to award attorney fees in light of husband's income and the other factors noted above.+

- If there is a wide disparity in the parties' earning capacities, an award of attorney fees is permissible.

In re Marriage of Troutd, 897 P.2d 838 (Colo. App. 1994)

Fact Pattern: The trial court originally ordered that Husband bear one-half of the Wife's attorney fees since it determined that those fees had been incurred in connection with the motion to modify maintenance. However, the trial court later granted Wife's motion to amend the order as to the award of attorney fees. The trial court ruled that attorney fees would be liquidated and entered judgment against Husband for the sum of \$1,972.88, which represented one-half the fees incurred by Wife. Although the record contained copies of the billings that Wife received from her attorney, the court made no specific findings showing how it arrived at the amount ordered. Nor was the reasonableness of the fees awarded established.

- Although a trial court may consider a party's actions in initiating unwarranted proceedings when determining whether to award attorney fees, the award should be primarily based upon the purpose of apportioning the costs and fees of an action equitably between the parties and not as a means of punishing a party
- An award of attorney's fees based solely on the fact that the parties' motion was denied is impermissible

In re Marriage of Weibel, 965 P.2d 126 (Colo. App. 1998)

Fact Pattern: The parties were married 25 years. The decree of dissolution was entered in 1990, at which time husband was ordered to pay maintenance to wife in the sum of \$1,500 per month. Husband, an attorney and certified public accountant, was awarded his law/accounting business together with other property, and wife was awarded the marital home with an equity valued by her at \$200,000 together with other property.

Upon the sale of the marital residence, the court ordered maintenance reduced to \$1,200 a month. Wife sold the marital residence and purchased a replacement

residence for \$90,000, which she paid in cash, and invested the balance of the proceeds from the sale of the marital residence in a savings/retirement plan.

In 1992, upon husband's motion, the court ordered maintenance reduced to \$800 a month. At that time, wife was employed as a social worker with a gross monthly income of \$1,260 and a net monthly income of \$971. Her expenses were \$2,160 a month, her savings/retirement plan had a balance of \$110,000, and her total assets were \$201,000. Husband reported assets of \$156,900, a gross monthly income of approximately \$5,000, and a net monthly income of \$3,300. Both parties were free of debt.

In 1996, husband filed a motion to reduce or terminate maintenance. Following a hearing, the magistrate found that husband was in approximately the same financial condition as when the decree originally entered and retained the ability to pay maintenance. The magistrate also found that: (1) wife's earnings from employment had increased to \$2,496 per month; (2) she remained debt-free; (3) her savings had increased to over \$150,000; (4) she made monthly contributions of \$374.40 to a 401(k) plan; and (5) she continued to own her home debt-free. The magistrate concluded that: "On this basis the Court would find it unconscionable to require that [husband] continue to pay the same amount of maintenance." Accordingly, the magistrate recommended that maintenance be reduced to \$250 per month.

On review, the trial court concluded that: (1) wife's financial circumstances had improved since the last hearing; (2) the magistrate had considered all other necessary factors; and (3) the reduced maintenance of \$250 would permit wife to meet her monthly expenses as stated by her in her testimony and financial affidavit. The court accepted the magistrate's recommended reduction of maintenance and also denied wife's request for attorney fees.

- The purpose of an award of attorney fees under § 14-10-119 is to apportion costs of dissolution equitably based on the parties' current financial resources
- Despite a disparity of income, when the court found that the spouse receiving maintenance had considerable assets and ordered her to pay her own attorney fees, there was no abuse of discretion.

In re Spong, 661 F.2d 6 (2d Cir. 1981)

Fact Pattern: The parties entered into an agreement where husband agreed to pay wife's attorney's fees. Husband subsequently attempted to discharge his attorney's fees in bankruptcy.

- Most states treat counsel fees as being within the definition of alimony, maintenance and support.

II. SCOPE

In re Marriage of Burford, 26 P.3d 550 (Colo. App. 2001)

Fact Pattern: The trial court recognized that the debts at issue "were incurred during the marriage and were largely associated with the dissolution litigation," but it divided the litigation costs under Colo. Rev. Stat. § 14-10-113.

- Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to this section, not § 14-10-113.

In re Marriage of Connell, 831 P.2d 913 (Colo. App. 1992)

Fact Pattern: Husband moved for modification of maintenance, citing changed circumstances. The marital home was sold and husband claimed no money was due to Wife. Wife moved for an accounting. After a hearing, the trial court divided sale proceeds of \$21,244 equally between the parties, continued Wife's maintenance at \$1,000 per month, and ordered husband to pay \$5,000 of her attorney fees. Husband was allowed to pay the sale proceeds and attorney fees over two years in monthly installments of \$650.92.

- The trial court has broad discretion in awarding attorney fees and, unless that discretion has been abused, the award will not be disturbed
- It is within the trial court's discretion to award only part of the fees

In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975)

Fact Pattern: The dissolution proceeding was commenced in 1973 with numerous procedural motions being filed. Husband responded to the petition for dissolution of marriage, denying that the marriage between the parties was irretrievably broken. Shortly before their marriage, the parties entered into an antenuptial contract, which provided that the property of each of the parties would remain separate, including property of each acquired during the marriage. The contract was silent on the subject of attorney's fees. It also provided that it would remain in full effect under the laws of any state to which the parties might later remove.

A contested evidentiary hearing on the merits of the petition, after which the trial court entered a decree dissolving the marriage, disposing of the property, and awarding of attorney's fees. The trial court found that Wife was unemployed and without funds for this purpose, whereas Husband was a practicing attorney with property resources.

- As the matter of attorney's fees was left open by the antenuptial contract there was no unconstitutional impairment of that contract by the award of attorney's fees based on the circumstances

In re Marriage of Huff, 834 P.2d 244 (Colo. App. 1992)

Fact Pattern: Husband and wife were married for 29 years prior to filing for dissolution. Husband had a college and law degree. Wife had college degree. After 5 years of marriage, husband and wife moved to Denver where husband began career as *associate* at law firm and wife became homemaker. Ten years before filing for divorce, husband moved out of the house and moved into an apartment. Wife and children remained in the home. At the time of filing, Husband was a partner in a law firm and Wife was still a homemaker. The marital estate was valued at \$871,000. Husband's interest in his law firm was found to be \$113,000.

The court ordered husband to pay wife maintenance as follows: For the remainder of calendar year 1989 and calendar year 1990, maintenance in the amount of \$5,000 per month. For calendar year 1991 and 1992 \$ 4,000 per month. For calendar years 1993 and 1994 \$3,000 per month. For the years 1995 and 1996 \$2,000 per month. For the years 1997 and until [the wife] dies or remarries \$1,000 per month.

The district court also ordered the husband to pay the wife's attorney fees. The court concluded that \$40,000 was a "reasonable and necessary" amount for the wife's attorney fees. The court then ordered the husband to pay \$ 30,000 of the wife's attorney fees, and gave him a \$10,000 credit for money he had "previously given [the wife] for attorney fees." The court further ordered that the husband would not be required to pay the attorney fees until June 1990. The court stated that "at that time [the husband] shall increase the maintenance payment in amount sufficient to pay the \$30,000 over a three-year period.

- Not appropriate to combine attorney's fees award with maintenance award
- Does not challenge the interrelatedness of purpose of awards of spousal maintenance and attorney's fees
- Husband, not the wife, should incur any tax consequences associated with the payment of these fees.

In re Marriage of Naekel, 181 P.3d 1177 (Colo. App. 2008)

Fact Pattern: Trial court awarded Wife attorney's fees related to remedial contempt and Husband filed a motion to review the attorney's fees award. Wife defended against Husband's motion for review and requested attorney's fees incurred in defending against his claim. The trial court upheld the attorney's fees on appeal but failed to rule on Wife's request for additional fees.

- It is error not to rule on a properly made request for attorney's fees
- C.R.C.P. 107(d)(2) gives the court discretion to award attorney's fees in a remedial contempt action
- C.R.S. 13-17-101, et seq. applies to every type of civil action, including contempt
- Court is not required to award attorney's fees merely because they ordered them for prosecuting the contempt

In re Meisner, 807 P.2d 1205 (Colo. App. 1990)

Fact Pattern: Mother submitted motion for enforcement of child support provision of separation agreement, which was incorporated into divorce decree.

- Provision in agreement granting parties remedies at law and in equity for enforcement of agreement gave court jurisdiction to hear motion for attorney fees.

In re Marriage of Mockelmann, 944 P.2d 670 (Colo. App. 1997)

Fact Pattern: Concurrent with a petition for dissolution and motion for temporary orders, wife requested an award for attorney fees and litigation costs, expert fees, and all future attorney and expert fees. In response, husband requested a hearing on the reasonableness and necessity of the fees.

The trial court ordered that husband pay all fees and costs incurred through temporary orders. However, the court denied wife's request for all future fees. The Court of Appeals reversed and remanded for the trial court to conduct a hearing on the reasonableness and necessity of wife's attorney and expert fees and make factual findings detailing how the court arrived at the amount of fees awarded.

- §14-10-108 provides for attorney's fees at temp. orders
- Award allows to continue litigation without undue sacrifice
- Means for temporary subsistence
- Trial court erred in denying husband's request for hearing on the reasonableness and necessity of wife's attorney fees and other costs.

In re Marriage of Noon, 735 P.2d 884 (Colo. App. 1986)

Fact Pattern: A decree of dissolution of Husband and Wife's marriage, incorporating a settlement agreement which included provisions for the disposition of all of the stock in two family owned corporations, GBN and HON, and which was

signed by husband and wife individually and as presidents, respectively, of GBN and HON. Pursuant to the agreement, wife transferred to husband all of her interest in GBN, and husband became the sole stockholder in that company. HON redeemed some of wife's shares in HON, and GBN purchased the balance of her HON shares, together with the shares of the three children, with the result that HON became a wholly owned subsidiary of GBN. Wife had served as president of HON for more than four years prior to the execution of the separation agreement.

Two years later, HON and GBN filed separate lawsuits in another judicial district, claiming that wife had defrauded HON while serving as its officer. Instead of directly defending against these actions, wife, claiming they constituted collateral attacks on the dissolution decree, moved the court in the dissolution action to enjoin HON and GBN from proceeding in their respective lawsuits.

The court agreed, holding that it had jurisdiction over the corporations because their presidents had signed the settlement agreement and because the corporations were alter egos of husband. It ordered the corporations to dismiss their lawsuits and also awarded wife attorney fees, holding that husband, GBN, and HON were jointly and severally liable for the fees. GBN voluntarily dismissed its action against wife, with prejudice, and so the injunction against it is not at issue here.

- Because family owned corporations were not parties to the dissolution action and because wife instituted post-decree proceedings that were groundless for lack of jurisdiction over the corporations against which relief was sought, court abused its discretion in imposing attorney fees against corporation and divorced husband
- It would be inequitable to require husband to pay wife's fees for legal services which should not have been performed

In re Marriage of Pickering, 967 P.2d 164 (Colo. App. 1997)

Fact Pattern: Pursuant to the parties' separation agreement, which was approved by the court, the parties had joint custody of their child. Later Father moved for modification of custody and support. Following a hearing, the trial court granted the Father's motion to modify support. It also ordered each party to bear his or her own attorney fees and costs, except for \$573 in expert witness fees which was awarded to the mother. Father argued the general provisions for recovery of costs for a prevailing party as set out in 13-16-105 should apply to expert witness and his attorney's fees.

- Trial court has wide discretion in awarding fees and costs and is not bound by the general provisions for recovery of costs for a prevailing party.

In re Marriage of Plesich, 881 P.2d 379 (Colo. App. 1994)

Fact Pattern: Wife was awarded residential and commercial property in the property division upon the dissolution of marriage. The property was encumbered by promissory notes secured by deeds of trust. Husband was ordered to satisfy the indebtedness of the property and hold the wife harmless from any liabilities. Husband subsequently defaulted on the loans. Wife sought enforcement of the hold harmless provision and attorney fees.

The trial court rendered judgment for wife, but denied her request for attorney fees. The Court of Appeals affirmed in part, affirming the trial court's judgment for wife to enforce the hold-harmless provision and reversed in part, awarding the wife attorney fees.

- Policy principals in UMDA take precedence over contract law
- This section allows for the award of attorney fees in subsequent proceedings even though the spouse was denied attorney fees in the original dissolution proceeding
- It was an abuse of discretion for the court to deny attorney fees on a subsequent motion where the denial was based on the denial of fees in the original proceeding.

In re Marriage of Rieger, 827 P.2d 625 (Colo. App. 1992)

Fact Pattern: The parties dissolved their 20-month marriage. The trial court ordered husband to pay the full amount of wife's attorney fees based upon the affidavit for fees and costs filed by wife's attorney. Husband requested a hearing challenging the reasonableness of the fees, but the trial court ruled that a hearing was not necessary. The appellate court vacated the trial court's award of attorney fees and remanded for the trial court to hold a hearing on the reasonableness and necessity of the attorney fees billed to wife.

- Attorney fees are not a non-challengeable marital debt under § 14-10-113.
- Trial court considering the award of attorney fees under this section must consider not only the reasonableness of the charge per hour but also the necessity for incurring the hours billed.
- This section confers significant discretion on the trial court, and permits consideration of the financial resources of both parties, so that where the husband has limited income and substantial financial obligations including payment of child support and the children's attorney fees, there is no abuse of discretion in the court's denial of the wife's motion for attorney fees.

In re Marriage of Schwaab, 794 P.2d 1112 (Colo. App. 1990)

Fact Pattern: The parties' gross income exceeded the uppermost level of income for which the child support guidelines have been adopted. Father's monthly income was in excess of \$12,500 or a total yearly income of \$192,725 (an average of \$16,000 per month). The parties split custody and father was ordered to pay \$1,800 in child support monthly. Father was also ordered to pay a portion of mother's attorney fees.

- It is within the trial court's discretion to award only a portion of the attorney fees.

In re Marriage of Swink, 807 P.2d 1245 (Colo. App. 1991)

Fact Pattern: Wife contacted legal services and was referred to an attorney who represented her on a pro bono basis. Wife repeatedly requested attorney fees incurred due to litigating the issue of custody (which husband indicated he would contest five days prior to permanent orders).

The trial court denied wife's request for attorney's fees, finding that the award was not necessary because wife obtained representation at no cost to herself. The attorney was granted leave to intervene and appealed. The Court of Appeals reversed, concluding that it is permissible to require a party to pay a reasonable sum for legal services rendered to the other party by a pro bono attorney in a dissolution proceeding.

- Award of attorney fees to attorney appearing on pro bono basis is allowable under statute.

In re Marriage of Ward and Baker, 183 P.3d 707 (Colo. App. 2008)

Fact Pattern: Wife sought to enter a judgment in Colorado after the State of New York had already vacated the judgments. Husband sought an award of attorney's fees against both Wife and her attorney. The trial court found that Wife's claims were substantial, frivolous and lacked substantial justification. The court awarded fees to Husband for the work done in Colorado, but refused to award attorney's fees for the work done by his New York attorney.

- Determining reasonableness of attorney's fees is a question of fact
- Trial court has jurisdiction and should consider attorney's fees related to out of state work on the case
- C.R.C.P. 11 provides a basis for an award of attorney's fees against an attorney signing pleadings
- Withdrawal of claim within a reasonable time of realizing he/she

would not prevail constitutes grounds for fees not being awarded

In re Marriage of Woolley, 25 P.3d 1284 (Colo. App. 2001)

Fact Pattern: Father filed a verified motion to remove the daughter from Colorado and relocate to Texas, where he had been commuting to work since the closure of his employer's Colorado base of operations. The court subsequently granted father's request to remove the daughter from Colorado to Texas and modified mother's parenting time. Mother was awarded attorney fees in the amount of \$4000, but that amount was reduced to \$3550 to account for a credit due father. The court declined to award the entire \$49,800 requested for attorney fees incurred through permanent orders. The trial court specifically rejected father's assertion that fees should be awarded because he "won" the case. The court also noted behavior of both parties that caused some fees to be incurred. The court then balanced the parties' financial circumstances, including mother's current circumstances and the fact that father had paid "immense" amounts for custody evaluations and other litigation expenses. On that basis, the court found an award was justified, but simply disagreed that all of mother's fees were reasonable and necessary

- Under the circumstances shown, the trial court's order was adequate to permit appellate review
- *In re Marriage of Aldrich* does not require the trial court to perform a "lodestar" analysis, as suggested in the dissent
- (Dissenting Opinion) Two part test: (1) The trial court must determine the amount of a reasonable attorney fee, which is usually based upon the "lodestar" amount, the product of a reasonable hourly fee and a reasonable number of hours expended in the litigation; (2) the trial court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities. Then, the trial court may apportion fees and costs, after making additional findings explaining how and why it arrived at the specific award

III. RIGHT/NEED

In re Marriage of Aldrich, 945 P.2d 1370 (Colo. 1997)

Fact Pattern: Mother and father were married for 13 years and had 2 children. Pursuant to the original separation agreement, mother and father shared ~~50%~~ in legal custody+while mother was ~~primary~~ residential custodian+for both children. By court approved stipulated amendment, father later became the ~~primary~~ residential custodian+for son and mother remained the ~~primary~~ residential custodian+for

daughter. The parties also stipulated that father was to pay \$615 per month in child support. This child support order was based in part on the day care expenses for the daughter of \$ 326 per month, the mother's reported income of \$ 1,040 per month, and the father's reported income of \$ 3,467 per month.

Father later moved to modify (reduce) child support and for attorney fees. At the hearing, mother testified that she no longer had work-related child care expenses; she had been a full-time homemaker for the past two years; currently, she was working part-time and earning \$2,200 per month. Father testified that he and his new wife owned a corporation in which they were the only shareholders; their (joint) bank accounts reflected deposits that were well over what they had declared as adjusted gross income; father and his wife also purchased a home and an automobile. The primary disputed factual issue was whether father's income had actually reduced. The trial court denied father's motion and granted attorney fees to mother.

- In awarding fees and costs under this section, the district court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities.
- Court must conduct a hearing, on the reasonableness of an award of attorney fees if a party requests a hearing.
- But a court need not conduct a hearing *sua sponte* if a hearing is not timely requested by a party.

In re Marriage of Balanson, 25 P.3d 28 (Colo. 2001)

Fact Pattern: The trial court's judgment included orders concerning Husband's employee stock options, Wife's interest in a family trust, interspousal gifts, maintenance, attorney fees, and child support. The court of appeals reversed the portion of the trial court's judgment concerning the classification and division of Husband's stock options and the portion concerning Wife's maintenance award.

- Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its attorney fee award, since in making an attorney fee award, the court must consider the financial resources of both parties

In re Marriage of Bohn, 8 P.3d 539 (Colo. App. 2000)

Fact Pattern: Two years after the dissolution of their marriage, the father won a prize of \$1.2 million gross from the Colorado State Lottery. The trial court determined that the entire \$1.2 million was gross income for the 1998 calendar

year, and, therefore, that the father's monthly gross income for 1998 was \$104,743.17. After considering the taxes the father would pay for 1998 income, the needs of the daughter, and the benefits she would have received had the marriage not been dissolved, the trial court ordered father to pay child support in the amount of \$4,208 per month during 1998 beginning April 23, 1998, when the mother filed the motion to modify. The trial court also found that the father "has invested a portion of his winnings and can expect to experience a significant increase in income in future years from that source." Accepting the estimate that his income in 1999 would be \$70,090, the trial court ordered that child support for 1999 was to be based on that income. Finally, the father was ordered to pay mother's attorney fees of \$1,984.64.

- After considering both parties' financial resources for purposes of child support, a trial court's finding that the father "is far better able to pay the cost of this proceeding than the mother is sufficient to support an award of attorney's fees

In re Marriage of Chalot, 94 P.3d 1191 (Colo. App. 2004)

Fact Pattern: Mother moved to modify child support in 1993 based upon adoption of the child support guidelines and changed circumstances. The parties reached a written stipulation in 1994, which was approved and made an order of the court.

Mother sought another modification in 2001 based upon a substantial and continuing change of circumstances. She also requested enforcement of the 1994 stipulation, seeking payment of child support arrearages due under the agreement since 1995. Father sought a declaratory judgment as to the extent of his obligation for postsecondary education expenses.

After a hearing, the magistrate concluded that father was obligated to pay child support arrearages of \$26,836 within twenty-four months; the provision of the 1984 separation agreement for postsecondary education expenses was contractual in nature, non-modifiable, and reaffirmed in 1994; it was not unreasonable for the child to attend the University of Vermont; father was responsible for the tuition, room, board, books, and fees at an undergraduate college until the child reached the age of twenty-two, when she would become emancipated; and father was required to pay \$14,000 of the \$21,621.88 attorney fees incurred by mother. Father next contends that the magistrate abused its discretion in awarding mother \$14,000 in attorney fees because father does not earn as great a percentage of the combined total income of the parties as the trial court found and the record showed that mother's net worth exceeded his.

- The district court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities
- Given the wide disparity in the parties' incomes, Court of Appeals could not determine as a matter of law that the court's failure to

calculate precisely the net assets renders the order an abuse of discretion

In re Marriage of Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Fact Pattern: Wife's motion to increase Husband's child support obligations was filed some seven months after the decree was entered dissolving the parties' marriage. The decree incorporated by reference a separation agreement executed by the parties which required husband to pay \$150 per month for support of the parties' two minor children, then aged 7 and 5, and to provide health insurance coverage for the children. Wife was granted custody of the two children and the right to declare them as dependents on her income tax returns.

Here, except for an increase of \$100 per month in husband's salary, the only change in circumstances since the date of the decree was the general rise in the cost of living and the slight increase in the ages of the children. Wife's testimony, for the most part, related to non-essential expenses which she had voluntarily incurred, or which were foreseeable at the time of the decree. In fact, the gist of her testimony was that, at the time of the decree, she had underestimated her living expenses, and that because of this underestimation the child support provisions of the separation agreement were not equitable.

- Where the wife not only earned more than husband, but had assets worth substantially more than husband's, and, moreover, initiated the proceedings making attorney fees necessary, the trial court abused its discretion in awarding attorney fees to wife

In re Marriage of Lee, 781 p.2d 102 (Colo. App. 1989)

Fact Pattern: The original trial court had found and concluded that each of the parties was the owner of a separate corporation or business and set these aside to the respective parties as separate property. It concluded that husband's corporation was the only one whose value had increased during the marriage. It determined the amount of that increase, which together with a house were substantially the only marital assets. These, the trial court divided between the parties. The trial court also ordered wife to repay certain debts to husband's corporation and subsequently granted a motion by husband for additional or amended findings. An award of maintenance and attorney fees was also granted.

The Court of Appeals, in a prior decision, remanded for further findings due to a reversal on Wife's issues of fraud, manipulation, and undervaluation. Wife appealed the adequacy of the trial court's findings on remand.

- Issues of maintenance and attorney's fees are so intertwined with the property settlement issue, a new trial on these issues must be had and a new distribution computed as to all three

- Purpose under §14-10-119 to ensure neither suffers unduly
- Based on same underlying premise as allowance to buy food, clothing or shelter
- Against public policy to force spouse to choose between food, clothing, or shelter and the right to appeal inadequate award
- A spouse that accepts payments for spousal maintenance or attorney's fees is not precluded for pursuing an appeal on those issues

In re Marriage of Lishnevsky, 981 P.2d 609 (Colo. App. 1999)

Fact Pattern: In a post-dissolution proceeding, father submitted a motion for modification of child support. Father's motion was denied and mother was awarded attorney fees for having to defend motion.

- The financial resources of the husband were greater than those of the wife and that disparity supports the order for attorney fees

In re Marriage of McKendry, 735 P.2d 908 (Colo. App. 1986)

Fact Pattern: During divorce Husband was awarded property he left the marital home with, valued at \$118,648.41. The remainder of the marital property was valued at approximately \$122,000 and was awarded to Wife. Because the court did not have personal jurisdiction over Husband, it entered no orders regarding, but retained jurisdiction over, issues pertaining to spousal maintenance, child support, attorney fees, and wife's interest, if any, in the property taken by Husband.

Four years later, Wife obtained personal service on husband. After a hearing, a different judge revalued the marital property retained by Wife at approximately \$160,000. Husband was temporarily unemployed at the time of the hearing and that Wife's assets were substantially greater than husband's. The trial court denied wife's request for spousal maintenance and for attorney fees.

- Where husband was temporarily unemployed at the time of the hearing and wife's assets were substantially greater than husband's, trial court did not abuse its discretion in denying wife's request for attorney fees.

In re Marriage of Pollock, 881 P.2d 470 (Colo. App. 1994)

Fact Pattern: In a post-decree action, father's child support obligation was modified to include an order for him to pay an unlimited amount toward the college expenses of the parties' children. Mother was awarded attorney fees. Mother and her attorney testified and the attorney submitted an affidavit to support the award of fees.

- Additional expert testimony was unnecessary to support award of attorney fees to mother in child support modification action where testimony of the mother, her attorney, and the attorney's affidavit adequately supported the award.

In re Marriage of Rose, 134 P.3d 559 (Colo. App. 2006)

Fact Pattern: After a 25-year marriage, wife filed motion for temporary orders requesting maintenance and attorney fees and costs. The trial court entered temporary orders awarding wife maintenance and requiring husband to advance wife anticipated attorney fees and costs.

The court's findings are supported by the evidence. Wife's expert testified that wife would incur substantial attorney fees because it would be necessary to trace husband's significant separate property, to value the hobby farming business, and to investigate the different values placed on husband's separate property. Wife's expert also testified that he had examined the monthly billings provided by wife's attorney and concluded that the amounts were reasonable. Husband's expert opined that each side would need approximately \$ 60,000 to \$ 75,000 to litigate the case to permanent orders.+

The appellate court concluded that the trial court had authority to advance prospective fees and costs because the trial court would decide the ultimate allocation of fees and costs at permanent orders

- Award of prospective attorney's fees when supported by credible evidence
- Serves to mitigate the potential harm to spouses and children

Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960)

Fact Pattern: The divorce decree awarded custody of the two minor children of the parties to mother. Mother worked the nightshift as a waitress and later began to attend Opportunity School. Mother depended on her family and friends for child care when at work or school. A year after the divorce, mother contacted father and asked him to take the children for a while because she did not have a %itter+and she had to work. Meanwhile, mother made arrangements for the children to stay at Denver Orphan's Home (a foster home not requiring relinquishment of child custody).

Father made an oral motion to the court for temporary custody of the children and suspension of the support payments to mother. The court granted his motion without notice to or appearance of mother. When mother, unaware of the ex parte order, contacted father to inquire about the return of her children, father told mother she could not have them. After learning about the order, mother applied to

the court to vacate it. On the same day, father moved for the court to award permanent custody of the children to him.

The district court vacated the ex parte order, reinstated the original order granting custody of the children to mother, and awarded mother attorney fees.

- Where a party initiated the circumstances making attorney's fees necessary, an allowance of attorney's fees was proper

IV. AMOUNT

In re Marriage of Shapard, 129 P.3d 1007 (Colo. App. 2004)

Fact Pattern: After six years of marriage, wife filed a motion to modify the maintenance award. Wife's motion was granted and wife subsequently filed a motion for attorney fees. A hearing was set on the issue of attorney fees. One day prior, wife's attorneys filed a motion to intervene. The attorneys had a charging lien against the wife.

The trial court allowed the attorneys to participate in the hearing and introduce evidence on the reasonableness and necessity of their fees. However, the court ultimately denied the attorney's motion to intervene. The court entered judgment in favor of the attorneys, allowing them to collect against husband.

- Enforcement of attorney's charging lien raises separate issues. Nothing in this section allows a spouse's attorney, as lienholder or otherwise, to litigate a claim for fees against the other spouse.

In re Marriage of Sarvis, 695 P.2d 772 (Colo. App. 1984)

Fact Pattern: The trial court's property division was in error. The trial court ordered husband to pay wife's attorney fees even though there was no proof of the number of hours the accountant spent in performing services and there was no indication in the record of the "reasonableness" of the attorney fees.

- There must be proof of reasonableness premised upon considerations of the amount of the fees charged, the time spent by the attorney, the services rendered, and the prevailing rates in the community.

V. MARITAL AGREEMENTS

In re Marriage of Christen, 899 P.2d 339 (Colo. App. 1995)

Fact Pattern: The marital agreement, incorporated into the Permanent Orders, provided that that prevailing party shall be reimbursed all costs and expenses, including reasonable attorney fees, incurred for the purpose of enforcing or preventing the breach of the marital agreement. In this case, the wife retained counsel and prevailed against husband's attempts to avoid the agreement.

- Post CMAA decision
- Not waiver of attorney's fees, but prevailing party provision
- Did not consider award under §14-10-119

In re Marriage of Dechant, 867 P.2d 193 (Colo. App. 1993)

Fact Pattern: The parties entered into an antenuptial agreement with provisions waiving attorney fees. The parties then separated after 6 ½ years of marriage. The trial court awarded wife attorney fees. The court remanded on the issue of attorney fees because it found that the trial court was required to make an express finding of unconscionability.

- Post-CMAA enactment, applying pre-enactment law
- Uses Newman approach to maintenance vs. property
- §14-10-119 analogous to §14-10-114, no exclusionary language referring to valid agreement of parties
- Award based on same underlying premise as maintenance
- Same review for unconscionability at time of enforcement should apply to waiver of attorney's fees

Irwin v. Irwin, 150 Colo. 261; 372 P.2d 440 (Colo. 1962)

Fact Pattern: The parties executed a written property settlement between themselves, which the court approved. The husband later requested modifications of his obligations, whereupon the trial court entered an order which relieved husband of many of his obligations and imposed varying obligations.

The appellate court held that the trial court had no authority to impose new and additional burdens because the parties had settled their problems and set forth their *only* duties by contract. Thus, the trial court ignored the binding contract of the parties.

The trial court's order for husband to pay wife's attorney fees lacks authority, because the contract does not set forth any provision of such an obligation.

- Judiciary cannot relieve parties of fair and binding contract
- Parents may not contract to divest court of jurisdiction over the custodial rights and duties of maintenance of children

Newman v. Newman, 653 P.2d 728 (Colo. 1982)

Fact Pattern: The Court of Appeals found the property settlement portion of an antenuptial agreement valid and found the maintenance portion of the agreement unenforceable. The Supreme Court affirmed in part, upholding the property settlement of the agreement enforceable, and reversed in party, holding that the maintenance waiver provision of the agreement was also enforceable.

- §14-10-119 controls awarding of attorney fees where antenuptial agreement was silent on the matter.
- Property rights only reviewable for unconscionability at time of execution
- Distinction between Antenuptial Agreements and Separation Agreements
- Change of circumstances can make valid waiver of maintenance unconscionable at time of enforcement
- Policy to mitigate harm consistent with governmental interest to protect health and welfare of its citizens
- Statutory distinction between valid agreements for property and maintenance

VI. 3RD PARTIES

In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001)

Fact Pattern: Maternal grandparents appeal an order awarding mother parenting time with her child and attorney fees, claiming that an award of attorney fees pursuant to §14-10-119 only applies to dissolution of marriage actions.

The trial court made extensive findings concerning the parties' relative financial resources, as well as their respective child support obligations. Although the trial court noted the grandparents' behavior in prolonging the estrangement between mother and the child and their failure to reconcile with mother, the trial court based its award of attorney fees primarily upon the parties' disparate financial circumstances for the purpose of placing them on equal financial footing.

- Trial court did not err in awarding attorneys fees in a non-parent custody proceeding authorized by § 14-10-123
- Should be based primarily upon the purpose of equitably

apportioning the costs and fees of the proceeding between the parties

- The award was neither punitive nor inequitable and did not constitute an abuse of discretion

In re Marriage of Ensminger, 209 P.3d 1163 (Colo. App. 2008)

Fact Pattern: Wife's attorney improperly subpoenaed a non-party. The non-party and Husband's attorney moved to quash the subpoena and for attorney's fees. Husband's attorney also pursued disqualification of Wife's attorney due to a personal relationship with Wife. The trial court disqualified Wife's attorney and awarded attorney's fees to non-party's attorney.

- Attorney's fees may be awarded to parties or non-parties
- No need to hold a hearing when a party fails to make a timely request for a hearing
- Proper to award attorney's fees pursuant to C.R.S. §13-17-102 when an attorney or party unnecessarily expanded the proceeding by other improper conduct including abuses of discovery procedures+

In re Marriage of Gallegos and Baca-Gallegos, 09CA2015, 2010 WL 3584283 (Colo. App. Sept. 16, 2010)

Fact Pattern: Mother requested attorney's fees related to grandparents' petition for grandparent visitation pursuant to C.R.S. §19-1-117. The trial court denied her request.

- Attorney's fees under §14-10-119 are not recoverable in a grandparent visitation action under Title 19
- Attorney's provision contained in §19-1-117(3) is limited to attorney's fee requests made after the initial visitation determination, in order to protect parents and children from repetitive litigation