

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, Colorado 80112 Phone: 303-649-6355	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,  Plaintiff,  v.  COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual;  Defendants.	
<i>Attorney for Defendant Mary C. Warren:</i> Fredric M. Winocur, No. 22112 R. Livingston Keithley, No. 35786 KAMLET REICHERT, LLP Address: 1515 Arapahoe Street Tower I, Suite 1600 Denver, CO 80202 Phone No.: 303-825-4200 Fax No.: 303-825-1185 E-mail: fwinocur@kamletlaw.com	Case No. 2008 CV 2659  Division: 404
<b>DEFENDANTS' UNOPPOSED JOINT MOTION TO RESET HEARING ON          CONTEMPT</b>	

Defendants Mary Warren, Robert Warren, and Stephenie Gardner (“Defendants”) hereby move to reset the contempt hearing currently scheduled for July 9, 2009, and to set a status conference within 20 days, and as grounds therefor states as follows:

1. Defendants received yesterday a denial-of-coverage letter from Philadelphia Indemnity Insurance Company (PIIC), which heretofore had agreed to advance defense costs in this action pursuant to a policy in place at the time of defendants’ employment. The letter from PIIC states that PIIC is no longer willing to provide coverage for the defense on either the contempt action, or the underlying litigation.

2. The Defendants are not currently employed and, in the absence of insurance coverage, cannot afford to maintain their respective attorneys who have worked on this matter for a considerable time. Setting aside the issue of whether or not counsels' respective law firms would agree to donate free legal services going forward, defense counsel has no present ability to continue to pay the defense investigator, to retain a forensic accountant and other experts, to hire court reporters for the purpose of conducting depositions, to pay process servers to compel the attendance of witnesses, to pay paralegals to assist in responding to discovery requests, to conduct on-line legal research, or to secure the attendance of out-of-state witnesses. In particular, the two witnesses identified by Defendants as necessary for the defense of the contempt hearing both live out of state.

3. Counsel for Defendants did not undertake this representation lightly, and in fact retained their own coverage counsel to issue an opinion confirming that Defendants were in fact covered by the policy in place at the time of the alleged conduct. Accordingly, this notice by PIIC, abruptly denying coverage at this critical stage, has taken counsel by surprise.

4. Upon initial review, it appears that the grounds asserted by PIIC in denying coverage are clearly erroneous. For example, the notification letter simply gets wrong the identity of the moving party, the nature of the claim, the period of the policy, etc. For these reasons, counsel has considerable optimism that PIIC will reinstate coverage. In the meantime, however, defense counsel have been hamstrung in their ability to defend against the pending contempt citation—which, as pled, overlaps the claims in the underlying case—impinging upon Defendants' due process and compulsory process rights.

5. Defendants are requesting a brief opportunity to determine if this insurance coverage issue may be resolved quickly, to insure continuity of representation. Any prejudice to either the Plaintiff or the Court caused by a brief stay would be minimal, when balanced against the extreme prejudice and hardship to the individual Defendants if they were forced at this juncture to either: 1) proceed without counsel; or 2) proceed with counsel hamstrung by the inability to defend.

6. The Defendants are not seeking this continuance for the purpose of delay; rather, the Defendants seek this continuance in the hopes of maintaining the continuity of counsel. The parties are proceeding in a good faith effort to minimize any delay triggered by this unforeseen change in circumstances. Therefore, defendants jointly request that this matter be set for a status hearing in twenty days wherein the parties may provide the Court with the status of counsel, the anticipated resolution of this matter, and the re-scheduling of the contempt hearing.

7. Pursuant to C.R.C.P. 121 § 1-11, this Court may continue a hearing upon a showing of good cause. Good cause exists where an unforeseen and exceptional circumstance arises which materially impedes a party's counsel from participating in a proceeding. *See Todd v. Bear Valley Village Apartments*, 980 P.2d 973, 977 (Colo. 1999)(trial court was within its discretion to continue trial due to defense counsel's unexpected emergency and subsequent incapacitation).

8. The undersigned has conferred with counsel for Plaintiff, who does not oppose a stay of the contempt hearing. Plaintiff, however, requests the Court independently resolve the

pending issues of: 1) Custodian's Motion for Order to Present & File Claims; and 2) Custodian's Motion to Sever and Bifurcate Custodianship From Other Issues; and requests the July 9, 2009 date be utilized for that purpose.

Dated: June 26, 2009

KAMLET REICHERT, LLP

/s/ Fredric M. Winocur  
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/s/ Ty Gee  
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*Attorney for Stephenie Gardner*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26<sup>th</sup> day of June, 2009, service of the foregoing **DEFENDANTS' UNOPPOSED JOINT MOTION TO STAY HEARING ON CONTEMPT PENDING INSURANCE COVERAGE DETERMINATION AS IMPACTING DUE PROCESS AND COMPULSORY PROCESS** was effected via LexisNexis, properly addressed to:

John W. Suthers, Esq.  
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Stephenie Gardner  
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In accord with C.R.C.P. 121 § 1-26(7) & (8) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

*/s/ Livingston Keithley*

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	Case No. 2008 CV 2659  Division: 404
<b>ORDER VACATING CONTEMPT HEARING</b>	

THE COURT, having received and reviewed the Unopposed Joint Motion to Reset Hearing on Contempt submitted jointly by Defendants Mary Warren, Robert Warren, and Stephenie Gardner, and having reviewed the file and being otherwise advised in the premises, hereby GRANTS the Motion. The Contempt Hearing currently scheduled for July 9 and 10, 2009, before this Court, is hereby VACATED.

The Court shall conduct a STATUS CONFERENCE at 8:30 a.m. on July 9, 2009 concerning the motions currently pending from the Custodian in this Court. The individual parties themselves shall not be required to attend that Status Conference.

Dated: June \_\_, 2009

BY THE COURT

\_\_\_\_\_  
 Hon. Charles Pratt  
 District Court Judge

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