

<p>COUNTY COURT, EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon, Colo. Spgs., CO P.O. Box 2980, Colo. Spgs., CO 80901 Phone Number: (719) 448-7650</p>	<p style="text-align: center;">△COURT USE ONLY△</p> <hr/> <p style="text-align: center;">Case Number: 2009C9181</p> <p style="text-align: center;">Division No. N</p> <p style="text-align: center;">Courtroom: W370</p>
<p>Plaintiff(s): LARRY BISHOP and WOODMEN HILLS METROPOLITAN DISTRICT</p> <p>v.</p> <p>Defendant(s): RONALD PACE</p>	
<p>Attorneys for Plaintiff:</p> <p>SUSEMIHL, McDERMOTT & COWAN, P.C. Jason W. Downie, #27256 660 Southpointe Court, Suite 210 Colorado Springs, CO 80906 Phone Number: (719) 579-6500 Fax Number: (719) 579-9339 E-mail: jdownie@smmclaw.com</p>	
<p>PLAINTIFFS' RESPONSE AND OBJECTION TO DEFENDANT'S BILL OF COSTS</p>	

COME NOW, Plaintiffs, Larry Bishop (“Bishop”) and the Woodmen Hills Metropolitan District (“District”), by and through their attorneys, Susemihl, McDermott & Cowan, P.C., by Jason W. Downie, and hereby submit their Response and Objection to Defendant’s Bill of Costs, and state as follows:

1. Defendant claims it is entitled to costs under C.R.C.P. 354(d). However, C.R.C.P. 354(d) only allows the award of costs against the State of Colorado, its officers or agencies only to the extent permitted by law.

2. It is undisputed that the Plaintiff Woodmen Hills Metropolitan District is a quasi-municipal corporation and political subdivision of the state. Municipalities, which are home rule cities and thus political subdivisions of the State may only be assessed costs in a dispute “only to the extent permitted by law.” See, Farmers Reservoir and Irrigation Co. v. City of Golden, 113 P.3d 119, 130 (Colo. 2005). The Supreme Court of Colorado in Farmers was considering the language of C.R.C.P. 54(d) which is identical to C.R.C.P. 354(d).

3. The Farmers Court held that “to be permitted by law” the legislature must intend to authorize courts to impose costs against the State or its political subdivisions. Id. The Farmers Court specifically held that “costs may be awarded against the State where there is an express legislative provision for costs or where the State is in the position of a party litigant against whom costs are otherwise legislatively authorized to be awarded. Id. (citing, Waters v.

District Court, 935 P.2d 981, 990 (Colo. 1997). However that a State is in the position of a party litigant is not by itself, sufficient to assess costs against it. Id. Rather, absent an express provision, there must also exist a “substantive legislative authorization” indicating a specific and clear legislative intent to assess costs against public entities. Id. In order for a general cost provision, like the one at issue in the case at bar (*i.e.*, C.R.C.P. 354(d) and C.R.S. §13-16-105), to constitute “substantive legislative authorization” regarding costs the provision must bear a precise nexus to the public entity to be charged. Id. at 131. The Farmer’s Court went on to explain that provisions such as C.R.S. §13-16-111, which allows costs to be awarded in C.R.C.P. 106(a)(4) actions, because in the absence of an express provision, the general costs provision is necessarily tied to public entities (*i.e.*, 106(a)(4) necessarily involve governmental entities). Id. Farmers also distinguished the awarding of costs in cases involving the Colorado Governmental Immunity Act since the act expressly stated that under the act when liability of a public entity has been waived, the “liability of a public entity is to be determined in the same manner as if the public entity were a private person.” Id.

4. In this matter Defendant merely relies on the general authority of C.R.C.P. 354(d) and C.R.S. § 13-16-105. Defendant can cite no express provision and clearly there is no “substantive legislative authorization” to assess costs against a political subdivision of the state in a proceeding brought pursuant to C.R.S. § 13-14-101, *et seq.* concerning Civil Protection Orders.¹ Accordingly, the Farmers decision is controlling and a public entity may not be assessed costs pursuant to C.R.C.P. 354(d) and C.R.S. § 13-16-105. See, Denny Constr. Inc. v. City and County of Denver, 170 P.3d 733 (Colo.App. 2007), rev’d on other grounds, 199 P.3d 742 (Colo. 2009) (rule of civil procedure, providing costs against a public entity requires an explicit legislative provision that specifically and clearly indicates the intent of the legislature to authorize costs against a public entity; costs may be awarded against public entity where there is express legislative provision or where costs are legislatively authorized to be awarded; however that a public entity is a litigant is not, by itself, sufficient to assess costs against it pursuant to C.R.C.P. 54(d)). Thus, in Denny even though the contractor prevailed against the city, and absent its status as a public entity, the contractor would be entitled to costs as the prevailing party, it was not proper to assess costs against the City, a public entity. See, C.R.C.P. 54(d) and the annotations cited therein.

5. Defendant’s reliance on Kussman v. City and County of Denver, 671 P.2d 1000 (Colo.App. 1983) is misplaced. Such case has been distinguished by Farmers since it involved the Colorado Governmental Immunity Act as discussed above. As demonstrated by Farmers and Denny, the Colorado courts have held that political subdivisions of the state such as home rule cities, and in the case the Plaintiff, fall within the purview of C.R.C.P. Rules 54(d) and 354(d) which prohibit the assessment of costs against a public entity in the absence of an express statutory provision or “substantive legislative authorization.”

WHEREFORE, Plaintiffs respectfully request this Honorable Court to deny Defendant’s Bill of Costs.

¹ Interestingly, C.R.S. § 13-14-102(20)(c) seems to grant the court discretion to require the respondent to reimburse the petitioner for costs incurred in bringing the action; however, there is no reciprocal provision concerning reimbursing the respondent for costs incurred in defending the action.

