

Colorado State Law

Freedom of Speech and the Press

Colorado's constitution states that, "No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact". (Colo. Const. Art. II, Section 10 (2016))

This section provides broader protection for freedom of speech than does the first amendment. This is with regard to political speech and obscenity. It does not provide more protection in the context of zoning regulations. (J. Gifts D-2, L. L.C. v. City of Aurora, 93 P.3d 633 (Colo. App. 2004).

In the case of Brock v. Westminster Mall (Colorado, 1991), the Colorado's Supreme Court deliberated if both the US and Colorado constitutions protected groups from distributing leaflets and non-violently expressing political speech in the common area of the privately-owned mall.

Colorado's Supreme Court prides itself on offering more protection for freedom of speech than the US courts. When making the ruling they quoted *Cooper v. People*, (13 Colo. 337, 362, 22 P. 790, 798 1889), "The object of article II, section 10 is to `guard the press against the trammels of political power, and secure to the whole people a full and free discussion of public affairs." Therefore extending the protection of free speech more broadly for Colorado courts.

The Court determined that there was restrictive government action. Due to several aspects including a police substation located in the mall where officers would then respond to complaints throughout the city. The mall had also received subsidies from the city government and have a frequent government presence of government military groups recruiting in the building. They also determined that it was content-based speech due to the political nature of the petition and leaflets, therefore the government's interest must be compelling and the restrictions must be the least restrictive means.

The former use of the common area of the mall resulted in the court deciding that it was a public forum. It had previously been allowed use by groups such as The Salvation Army, and no restrictions had been made based on religion.

The court ruled to overturn the court of appeals decision to restrict the speech of the petitioners in the mall. Though the US Constitution does not extend freedom to distribute political literature to those inside of a privately owned shopping mall, but Colorado interpreted its constitution to be more broadly protective of freedom of speech and extend these rights to its people.

Defamation Laws

Colorado's revised statutes (Colo. Rev. Stat. § 13-25-125) states that in a defamation case, the truth of the statement, if proven, is a justification for the defense. Only the gist of the matter must be proven true. Issues of public concern are only libelous if knowingly false.

In *Burns v. McGraw-Hill Broadcasting Co.* (Colorado, 1983) the Colorado Supreme Court found that the broadcasting company did in fact post a defamatory statement about a woman who divorced her husband, a police officer, that was then blinded and damaged in a bomb accident. The state says a statement is defamatory "if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Restatement (Second) of Torts* § 559 (1976); C.J.I. —Civ.2d § 22.8 (1980).

The jury in the previous trial found that Mrs. Burns' reputation was damaged by the statement *libel per se*. The statement issued by the paper used the term "deserted", which was interpreted by the jury to have negative connotations and no alternative meanings that would not be defamatory.

The US Constitution protects some forms of opinion speech. The Colorado Court determined that opinions can be defamatory when "the average reader or listener or viewer perceives the comment as essentially an assertion of fact, in light of the relative specificity of the language used and the relative insufficiency of the connection of such language to supporting fact." The Court found that the statement was not protected because it came across to readers as a statement of fact with innuendoes that make Mrs. Burns sound like a bad person. The statement could also be proven false because she had divorced him prior to the incident. The falsity of the statement included the omission of important facts regarding the true circumstances of Mrs. Burn's divorce.

The court also considered reckless disregard, and determined that there was evidence that the McGraw-Hill had proceeded with reckless disregard of the truth or attributing false action to Mrs. Burns.

All of the requirements used in this case to determine libel are similar to US Constitutional law. It appears that the Colorado courts are as strict with determining libel as the US Federal courts. The statutes contain many requirements that the plaintiff has the burden to prove. They make sure that restricting speech due to libel does not take away from freedom of speech or restrain opinions.

Privacy Tort Laws

The state of Colorado recognizes three of the four privacy torts; intrusion upon seclusion, public disclosure of private facts and appropriation. The privacy tort of appropriation was recognized in 2001 (Joe Dickerson & Associates v. Dittmar (Colorado, 2001)). The elements considered in this tort are: 1. The defendant used the

plaintiff's name or likeness; (2) the use of the plaintiff's name or likeness was for the defendant's own purposes or benefit; (3) the plaintiff suffered damages; and (4) the defendant caused the damages incurred. Much like common law, such a claim will not succeed, however, if the defendant's use of the plaintiff's name and likeness is constitutionally privileged (Colo. Const. Art. II, Section 10 (2016)). One way the use of appropriation is constitutional is if it considered newsworthy.

In the Colorado Supreme Court case of Joe Dickerson & Associates, LLC v. Dittmar (Colorado, 2001), the state's statute was determined to be a little more lenient than the common law appropriations statute. The plaintiff's name and likeness just has to be used for the defendant's own benefit, commercially or otherwise, when the common law requires it to be for a commercial purpose. But, like the common law, the appropriation is privileged if it is newsworthy or of concern to the public. That was the case in Joe Dickerson & Associates v. Dittmar (Colorado, 2001). The women who sued for appropriation because photos of her arrest were posted in the paper, did not win the case. The court found these photos and information about the arrest to be public interest. In this case the state also determined that the common law requirement of the plaintiff to prove her reputation/ image had previous value was illogical, it was enough that they prove there was damage of some sort. They removed this requisite from the appropriations law.

Criminal Trespassing

"An individual commits first degree criminal trespassing when such person knowingly and unlawfully enters or remains in a dwelling of another or if such person enters any motor vehicle with intent to commit a crime therein"(18-4-502). In order for it to be first degree, it is important that it can be proved that the area that was unlawfully entered was a dwelling. This differs from second degree trespassing which requires that someone unlawfully enters or remains in or upon the premises of another which are

enclosed in a manner designed to exclude intruders or are fenced, common areas of a hotel, motel, condominium, or apartment building; or a motor vehicle of another. To be guilty of third degree trespassing if such person unlawfully enters or remains in or upon premises of another, this includes the use of water for recreational purposes located on private lands. Premises is defined as real property, buildings, and other improvements thereon, and the stream banks and beds of any non navigable fresh water streams flowing through such real property (18-4-504.5).

Police are allowed on property in the case of a search. A search is not the equivalent of trespassing (People v. Santistevan, 715 P.2d 792 (Colo. 1986)). In addition, anyone who is licensed as a surveyor or working under the direct supervision of a such a person, may enter private or public land in order to fulfill their job duties. (Colo. Rev. Stat. § 18-4-515 (2016)). People who are exempt from the trespassing statutes because of their job may only stay on the property as long as it takes to complete their job duties (18-4-515).

Electronic Recording Devices

In Colorado, recording a conversation is legal if one party is notified prior to the start of the recording (Colo. Rev. Stat. § 18-9-304 (2016)). Colorado words the statute with an exemption for news media from its eavesdropping and wiretapping statutes. It states that its laws are not to be “interpreted to prevent a news agency, or an employee thereof, from using the accepted tools and equipment of that news medium in the course of reporting or investigating a public and newsworthy event.” (Colo. Rev. Stat. § 18-9-305.) It is also a felony to disclose any information gathered from an illegal recording or wiretap (Colo. Rev. Stat. § 18-9-304). Under (Colo. Rev. Stat. § 18-7-801), it is illegal to take a photograph, video, live feed or any other visual product of a person without their consent if they have a reasonable expectation to privacy. The statutes do not specify any restrictions on photographs when no reasonable amount of privacy is

expected. It is illegal to manufacture, buy or sell any device used for wiretapping or eavesdropping (Colo. Rev. Stat. § 18-9-302 (2016)).

The state allows expanded media coverage with the permission of the judicial officer at least a day before the trial. Media coverage may not be allowed during pretrial criminal cases, when selecting the jury, close up video or audio of jury members and bench conferences. Media coverage is restricted to one camera at a time in the courtroom and no flash is permitted (Colorado Supreme Court Rules, Chapter 38, Rule 3).

Open Meeting Laws

According to (Colo. Rev. Stat. § 24-6-401 2016), it is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret. All meetings of two or more members, or a quorum, of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times. The state defines local public body as, any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body (Colo. Rev. Stat. § 24-6-402 (2016)). The statute requires that timely notice be given prior to a public meeting where a quorum of them members are expected to attend. The statute specifies timely as at least 24-hours prior to the meeting in an area that is open to public view (Colo. Rev. Stat. § 24-6-402 (2016)).

The minutes of the meetings must be recorded, including the authorization of an executive session. These minutes must be open to the public. In order to authorize an executive session, there must first be a lawful meeting in place, then there must be an affirmative vote of 2/3 , and the reason for the meeting must be announced (Colo. Rev.

Stat. § 24-6-402 (f)(3)(a)). Some examples of acceptable reasons for holding an executive session include; the discussion of the purchasing of property for public use, Conferences with an attorney representing the state public body, details of security arrangements or investigations that if public could cause a threat and matters concerning trade secrets. (Colo. Rev. Stat. § . 24-6-402 (I)). Any rules or decisions made will be found void if the meeting was unlawful and didn't follow the open meeting rules.

Public Record Laws

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law (Colo. Rev. Stat. § 24-72-201 (2016)). The statutes allow all people to request public records from all levels and branches of the state government, as long as the records are official actions (Colo. Rev. Stat. § 24-72-202(5); (6)(a)(I)). This includes nongovernmental bodies if they receive federal funding or have a member that is a public official (Denver Post v. Stapleton Dev. Corp., 19 P.3d 36 (Colo. App. 2000)). Requests are to be fulfilled within 3 business days.

Examples of exemptions to the public records statutes are: any records of investigation by law enforcement, test questions, scoring data and other information pertaining to administration of an examination, specifics of bonafide state research projects, and information about an ongoing civil investigation (Colo. Rev. Stat. § 24-72-204 (2)). Colorado's exemptions appear to be broader than FOIA due to the exemption of public interest. The custodian of public records is allowed to deny access on the ground that disclosure to the applicant would be contrary to the public interest (Colo. Rev. Stat. § 24-72-204 (2) (a)). But on the other hand, the laws also have less restrictions on who can ask for records and less restrictions on who they can ask. They also have a faster required response time.

Colorado's statute states that fees may be reduced or waived for information produced from a computer database if the records are to be used for a "public purpose," including "nonprofit activities, journalism, and academic research" (Colo. Rev. Stat. § 24-72-203).

Reporter Shield Statute

Colorado has a privilege per newsmen's statute. no newsmen shall, without such newsmen's express consent, be compelled to disclose, be examined concerning refusal to disclose, be subjected to any legal presumption of any kind, or be cited, held in contempt, punished, or subjected to any sanction in any judicial proceedings for refusal to disclose any news information received, observed, procured, processed, prepared, written, or edited by a newsmen, while acting in the capacity of a newsmen (Colo. Rev. Stat. § 13-90-119 (2016)). According to (Colo. Rev. Stat. § 13-90-119 (1)(c)), newsmen means any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write, or edit news information for dissemination to the public through the mass media.

There are several exceptions to this nondisclosure statute. They include; news information received at a press conference, news that has been published through a medium of mass communication, News information based on a newsmen's personal observation of the commission of a crime if substantially similar news information cannot reasonably be obtained by any other means and news information based on a newsmen's personal observation of the commission of a class 1, 2, or 3 felony (Colo. Rev. Stat. § 13-90-119 (2)(a-d)).

In order for a newsmen to be required to share information, a subpoena and a preponderance of evidence against the newsmen is required. Some reasons that make the poisons acceptable include; that the news is directly relevant to a substantial issue in the proceedings, that the information cannot be obtained by any other

reasonable means, a strong interest of the party seeking to subpoena the newsperson outweighs the interests, under the first amendment, of the newsperson in not responding to a subpoena as well as the interests in the general public receiving the news information (Colo. Rev. Stat. § 13-90-119 (3)(a-c)).

Professional Associations

For my future profession involving environmental science, there are several professional associations in Colorado. One of them is the Colorado Environmental Professionals Association. They offer trainings and links to resources to stay up to date on issues and the laws, such as the EPA, Colorado Department of Public Health and Environment, and Occupational Health and Safety administration. They provide a list of the by-laws on the site. One of their listed objectives is to help individuals stay up to date with the current laws and issues.

In the case that my profession will also involve public relations, Colorado has a chapter of the Public Relations Society of America. They offer training, accreditation and conferences. They send of frequent newsletters about updates in the profession. They also have a career resources manual. Though they don't have a direct link to the state laws on their website, it appears that they might provide members with updates on changes in the state law that impact the public relations profession in newsletters and at conferences.

State Lawyers

On the Colorado Bar Association website there is a directory you can search to find a lawyer in the state. The list tells you where they are located and if they are in the association. You can search based on issue and location for a non-profit referral of the lawyers in your area. The Boulder County Bar Association lawyer search includes a disclaimer that says that they cannot vouch for the qualifications and expertise of the

lawyers included in the directory. It appears that several of Colorado's Bar Associations offer free referrals regardless of the subject of the case.