

**RULE 105.1. Spurious Lien or Document**

(a) **Petition; Contents, Order to Show Cause.** Any person whose real or personal property is affected by a spurious lien or spurious document, as defined by law, may file a petition in the district court in the county in which the lien or document was recorded or filed, or in the district court for the county in which affected real property is located, for an order to show cause why the lien or document should not be declared invalid. The petition, which may also be brought as a counterclaim or a cross-claim in a pending action, shall set forth a concise statement of the facts upon which the petition is based, shall be supported by the affidavit of the petitioner or the petitioner's attorney, and shall be accompanied by a copy of the lien or document as recorded or filed in the public records. The order to show cause may be granted ex parte and shall:

(1) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than 14 days nor more than 21 days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by statute should not be granted;

(2) State that if the respondent fails to appear at the time and place specified, the lien or document, if found by the court to be spurious, will be declared invalid and released; and

(3) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(b) **Notice; Service.** The petitioner shall issue a notice to respondent setting forth the time and place for the hearing on the show cause order, which hearing shall be set not less than 14 days nor more than 21 days from service of the show cause order, and shall advise respondent of the right to file and serve a response as provided in section (c), including a reference to the last day for filing a response and the addresses at which such response must be filed and served. The notice shall contain the return address of the petitioner or the petitioner's attorney. The notice and a copy of the petition and order to show cause shall be served by the petitioner on the respondent not less than 14 days prior to the date set for the hearing, by (1) mailing a true copy thereof by first class mail to each respondent at the address or addresses stated in the lien or document and (2) filing a copy with the clerk of the district court and delivering a second copy to the clerk of the district court for posting in the clerk's office, which shall be evidenced by the certificate of the petitioner or petitioner's agent or attorney. Alternatively, the petitioner may serve the petition, notice, and show cause order upon each respondent in accordance with Rule 4, or, in the event the claim is

brought as a counterclaim or cross-claim in a pending action in which the parties have appeared, in accordance with Rule 5.

**(c) Response; Contents; Filing and Service.** Not less than 7 days prior to the date set for the hearing, the respondent shall file and serve a verified response to the petition, setting forth the facts supporting the validity of the lien or document and attaching copies of all documents which support the validity of the lien or document. Service of such response shall be made in accordance with Rule 5(b).

**(d) Hearing; Decree; Hearing Dispensed With If No Response Filed.** If, following a hearing on the order to show cause, the court determines that the lien or document is a spurious lien or a spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or document and any related notices of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against the respondent and in favor of the petitioner. If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or document, the court shall issue an order so finding and enter a monetary judgment against the petitioner and in favor of the respondent in the amount of the respondent's costs, including reasonable attorney fees. If necessary, the court may in its discretion continue the hearing on the show cause order for further proceedings and trial. If no response is filed and served by the respondent within the time permitted by section (c), the court shall examine the petition and, if satisfied that venue is proper and that the lien or document is spurious, the court shall dispense with the hearing and forthwith enter the order, which shall be a final judgment for purposes of appeal. If the petition has been personally served upon the respondent in accordance with Rule 4(e) or (g), the court shall enter judgment in favor of petitioner and against the respondent for the petitioner's costs, including reasonable attorney fees.

**(e) Docket Fee.** A docket fee in the amount specified by law shall be paid by the petitioner. The respondent shall pay, at the time of the filing of the response, a docket fee in the amount specified by law for a defendant or respondent in a civil action under section 13-32-101(1)(d), C.R.S.

**History:**

Source: Entire rule added and adopted December 18, 1997, effective January 1, 1998; b and d corrected December 30, 1997, effective January 1, 1998; b amended and effective June 28, 2007; a1, b, and c amended and adopted December 14, 2011, effective July 1, 2012.

**Case Note:**

**Annotation**

Because a lis pendens can be a spurious document, trial court may award attorney fees and costs for a spurious lis pendens. *Shyanne Props., LLC v. Torp*, 210 P.3d 490 (Colo. App. 2009).

Defendants' petition for removal of a lis pendens as a spurious document constituted a counterclaim, even though it was not denominated as such, because defendants filed the petition in a pending action and not in a separate proceeding. Therefore, defendants were not required to pay a docket fee and properly served their petition under C.R.C.P. 5 using an electronic filing system. *Shyanne Props., LLC v. Torp*, 210 P.3d 490 (Colo. App. 2009).

Trial court had jurisdiction to award attorney fees and costs to defendants for a spurious lis pendens. Because plaintiff did not refute that the lis pendens was spurious at the show cause hearing, trial court had jurisdiction to enter judgment in favor of defendants and against plaintiff for defendants' costs and attorney fees. *Shyanne Props., LLC v. Torp*, 210 P.3d 490 (Colo. App. 2009).

Trial court abused its discretion in awarding attorney fees without holding an evidentiary hearing on the reasonableness and necessity of the attorney fees requested by defendants. If a party requests a hearing concerning an award of fees, the trial court must hold a hearing. *Shyanne Props., LLC v. Torp*, 210 P.3d 490 (Colo. App. 2009).