

District Court, Saguache County, Colorado 501 4 th Street, Saguache, CO 81149	DATE FILED: November 9, 2022 3:45 PM CASE NUMBER: 2022CV5
IN THE MATTER OF: CITIZENS FOR PROPOSED TOWN OF BACA GRANDE	<p style="text-align: center;">Δ COURT USE ONLY Δ</p> <hr/> Case No.: 2022CV5 Division: C
ORDER REGARDING (1) THE BACA GRANDE PROPERTY OWNERS ASSOCIATION’S MOTION TO DISMISS, & (2) THE CITIZENS FOR PROPOSED TOWN OF BACA GRANDE’S MOTION TO AMEND THE PETITION TO INCORPORATE AS THE TOWN OF BACA GRANDE	

THIS MATTER comes before the Court on two motions. On September 30, 2022, Intervenor Baca Grande Property Owners Association’s (“Association”) filed a Motion to Dismiss. On October 21, 2022, the Citizens for Proposed Town of Baca Grande (“Petitioners”) filed a Motion to Amend the Petition to Incorporate as the Town of Baca Grande (“Motion to Amend Petition”).

Having reviewed the Motion to Dismiss and the Motion to Amend Petition, applicable law, and pertinent matters of record, the Court enters this Order (1) permitting the Petitioners to proceed on their proposed amended petition (“Amended Petition”), and (2) directing the Association to file a notice within seven (7) days of the issuance of this Order as to whether it intends to raise the same arguments with respect to the Amended Petition that it raised relating to the original Petition for Incorporation of the Town of Baca Grande (“Original Petition”) or whether it intends to file another motion to dismiss. Should the Association elect to file another motion to dismiss, it must do so within fourteen (14) days of the filing of the notice.

BACKGROUND

The Original Petition was filed on August 8, 2022. On August 24, 2022, the Court issued an order requiring the Petitioners to (1) submit additional information regarding service of notice

of the filing of the Original Petition on all citizens within the proposed town's boundaries, and (2) post a bond in the amount of \$500 pursuant to C.R.S. § 31-2-101(d).

On September 30, 2022, the Association filed a Motion to Intervene. On the same date, the Association filed a Motion to Dismiss. The Court granted the Association's Motion to Intervene on October 4, 2022. The Petitioners filed the bond on October 9, 2022.

The Petitioners filed a response to the Association's Motion to Dismiss on October 21, 2022. On the same date, the Petitioner's filed a Motion to Amend the Petition. The Amended Petition was embedded in the Motion to Amend the Petition. *See id.* at pp. 3-12. The Petitioners also filed two exhibits in support of the Amended Petition. The Amended Petition is signed by the "Baca Grande Petitioners" whereas the Original Petition was signed by "Desiree Marceau." *Compare Original Petition at p. 2 with Amended Petition at p. 2.*

The Association filed a reply in support of the Motion to Dismiss on October 28, 2022. The Association did not mention the fact that the Petitioners moved to amend the Original Petition on the same date that they filed their response to the Motion to Dismiss. The certificate of service section of the Motion to Amend the Petition indicates the Petitioners served the Motion to Amend the Petition on the Association's counsel by mail on October 21, 2022. The Court is unable to determine if the Association was aware of the Motion to Amend the Petition or corresponding Amended Petition prior to the filing of the Reply.

ANALYSIS

The Court declines to rule on the substantive arguments the Association raised in support of its Motion to Dismiss at this time. The Motion to Dismiss addressed the Original Petition. In their Amended Petition, the Petitioners made substantive changes that appear to be designed to remedy some of the alleged defects the Association identified in relation to the Original Petition. Under C.R.C.P. 15, the Petitioners are allowed to amend their operative pleading *once* prior to the filing of a responsive pleading. *See DIA Brewing Co., LLC v. MCE-DIA, LLC*, 480 P.3d 703, 707 (Colo. App. 2020) (explaining that a motion to dismiss is not considered a responsive pleading and that a party is permitted to amend its pleading once as a matter of course before a responsive pleading is filed) (citing C.R.C.P. 15(a)).

Therefore, the Court authorizes the filing of the Amended Petition, which can be found on PDF pages 3 through 12 of the Motion to Amend Petition. The Petitioners may not file a

second amended petition without seeking leave to do so via a written motion or showing that the Association consented to the amendment in writing. C.R.C.P. 15(a). The Association is directed to file a notice informing the Court if it intends to rely on the arguments it raised in the Motion to Dismiss within seven (7) days of the issuance of this Order. If the Association decides to file another motion to dismiss that addresses the Amended Petition, the Association shall inform the Court in the notice required by this Order, and the motion to dismiss the Amended Petition must be filed within fourteen (14) days of said notice.

Although the Court is opting to hold its ruling on the Motion to Dismiss in abeyance at this time, the parties raised some points that are addressed in this Order in hopes of streamlining the resolution of this case. In their response to the Motion to Dismiss, the Petitioners note they are proceeding *pro se* and cite case law that stands for the proposition that *pro se* parties are held to a less stringent standard than licensed attorneys. Additionally, in its reply in support of the Motion to Dismiss, the Association argued the Petitioners should either be ordered to hire counsel or designate one or more petitioners to sign filings in compliance with C.R.C.P. 10. The Court will address each of these points in turn.

Even *Pro Se* Parties Must Abide by the Applicable Law

It is true that trial courts must construe *pro se* arguments liberally. *Minshall v. Johnston*, 417 P.3d 957, 959 (Colo. App. 2018). However, “[w]hile courts may take into account the fact that a party is appearing *pro se*, *pro se* parties are ‘bound by the same rules of civil procedure as attorneys licensed to practice law.’” *Cornelius v. River Ridge Ranch Landowners Ass’n*, 2020 P.3d 564, 572 (Colo. 2009) (quoting *Negron v. Golder*, 111 P.3d 538, 540 (Colo. App. 2004)); *see also Southern Cross Ranches, LLC v. JBC Agricultural Management, LLC*, 442 P.3d 1012, 1019 (Colo. App. 2019) (“ . . . Colorado courts do not provide special treatment to unrepresented litigants, at least in civil cases.”) (citations omitted).

The Court is mindful of the fact that the Petitioners are proceeding *pro se*. Nevertheless, the Petitioners are still required to comply with the Colorado Rules of Civil Procedure. As mentioned above, one of the procedural rules permits a party to file an amended pleading once as a matter of course prior to the opposing party’s filing of a responsive pleading. By filing the Amended Petition, the Petitioners have exhausted their opportunity to amend their pleading as a matter of course. Any further requests to amend the Amended Petition must comply with C.R.C.P. 15(a).

The Petitioners are Directed to Appoint One or More Representatives for Purposes of Signing Pleadings and Motions and Conferring with the Association

As the Association accurately points out, C.R.C.P. 10(d)(4) requires that each filing contain a signature block for the attorney or *pro se* party. Additionally, C.R.C.P. 10(a) provides, in pertinent part:

Every pleading, motion, E-filed document under C.R.C.P. 121(1-26), or any other document filed with the court . . . in both civil and criminal cases shall contain a caption setting forth the name of the court, the title of the action, the case number, **if known to the person signing it**, the name of the document in accordance with Rule 7(a), and the other applicable information in the format specified by paragraph (d) and the captions illustrated by paragraph (e) or (f) of this rule. . .

(Emphasis added). C.R.C.P. 11(a) requires that each party’s pleading be signed by an attorney if the party has counsel and that “[a] party who is not represented by an attorney shall sign his pleadings and state his address.” Finally, under C.R.C.P. 121 § 1-15(8):

Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. . . . The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated.

(Emphasis added).

The Court declines to require the Petitioners to hire counsel. The Association did not cite to any authority that requires the Petitioners to be represented by counsel for purposes of the relief sought in the Amended Petition. However, C.R.C.P. 10, 11, and 121 § 1-15(8) support the Association’s position that the Petitioners should be ordered to appoint one or more representatives for purposes of signing pleadings/motions and for conferring with opposing counsel. The Petitioners must designate one to three representatives for purposes of conferring with the Association prior to file any subsequent motions. The Court also concludes the Petitioners’ pleadings/motions must be signed by the designated representative(s). Going forward, each of the Petitioners’ filings must have the contact information of the Petitioners’ representative(s).

ORDER

IT IS THEREFORE ORDERED THAT the Association's Motion to Dismiss is held in abeyance pending the notice described above. The Association shall notify the Court within seven (7) days of the issuance of this Order as to whether the Association intends to rely on the Motion to Dismiss it filed on September 30, 2022. In this notice, the Association must advise the Court if it elects to file another motion to dismiss, and the motion to dismiss must be filed within fourteen (14) days of the filing of said notice.

IT IS FURTHER ORDERED THAT the Petitioners Motion to Amend the Petition is GRANTED. The Amended Petition that is included on pages 3 through 12 of the Motion to Amend the Petition is the Petitioners' operative pleading.

IT IS FURTHER ORDERED THAT the Petitioners must designate one to three representatives for the signing of pleadings/motions and for conferring with the Association's counsel prior to filing motions. Henceforth, any motions the Petitioners file must contain a certificate of conferral in compliance with C.R.C.P. 121 § 1-15(8) and any subsequent filings must be signed by the Petitioners' representative(s) in compliance with C.R.C.P. 10(a) and include the contact information of the Petitioners' representative(s).

Dated this 9th day of November 2022.

BY THE COURT:



Crista L. Newmyer-Olsen
District Court Judge