

Exhibit FP-3 - Application of *Baker v. Young* Five Elements of Fraud Upon the Court to Verified Evidence

To establish "Fraud Upon the Court" in Colorado and warrant the vacatur (setting aside) of a judgment, the moving party must prove the following five elements by **clear and convincing evidence**:

Element	Description	Standard & Purpose
1. An Intentional, Material Misrepresentation or Omission	The misconduct must involve a false statement of fact or law, or the concealment of a material fact.	The act must be deliberate, not merely negligent or a mistake in advocacy.
2. Directed at the Tribunal	The misconduct must be aimed at deceiving the court itself, corrupting the court's process, or subverting the court's impartial function.	This is the crucial distinction: it is not fraud between the parties, but fraud against the "judicial machinery" (as cited in <i>Buckley v. Chilcutt</i>).
3. By an Officer of the Court	The misconduct must be committed by an attorney, a party proceeding pro se, or another person who is part of the machinery of justice (e.g., an expert witness).	The court places a higher trust and duty of candor on those who appear before it.
4. That Defiles the Integrity of the Court	The conduct must be so egregious that it truly undermines the public's confidence in the judicial system and the impartial administration of justice.	The fraud must shock the conscience of the court and threaten the court's core function.
5. That Cannot Be Cured by Standard Means	The fraud is typically collateral (not resolved by the original trial or judgment) and is not the type of fraud that could have been remedied through ordinary legal procedures (like a motion for a new trial or appeal).	This is why the remedy is available at any time it is reserved for systemic corruption that procedural rules cannot fix.

Distinction from Simple Fraud

The "Baker 5" framework ensures that the high standard for **Fraud Upon the Court** is met, distinguishing it from:

- **Inter-Party Fraud:** Fraudulent misrepresentation between the parties, which must be raised within a time limit (C.R.C.P. 60(b)(2) and (3)).
 - **Perjury:** False testimony, which, while serious, often does not meet the "defile the integrity" standard unless it is part of a larger, coordinated scheme by an attorney to deceive the court (such as in **ghostwriting expert reports** or **concealing financial evidence**).
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Element 1: Intentional, Material Misrepresentation or Omission

A deliberate false statement or concealment of material fact made to mislead the tribunal. The June 16, 2023 witness disclosure falsely identified Jay E. Freedberg as Petitioner's expert. Billing and authorship records show Freedberg neither wrote nor adopted the reports. Counsel redacted Freedberg's name from the June 15 billing entry and filed the altered version two days later.

Supporting Evidence: Exhibit III (File ID FED53E8356F6C); Exhibit III-UR (File ID 1445DAA19E770); Exhibit FP-17; Witness Disclosure (File ID 12E14E22975AD).

Element 2: Directed at the Tribunal

Misconduct must be aimed at deceiving the court itself, not merely another party. The misrepresentation targeted the Court's own case-management oversight by concealing that a second expert was being introduced despite the standing January 31, 2023 one-expert limitation.

This deception prevented the Court from enforcing its order and from managing expert testimony under Rule 16.2(e)(3).

Supporting Evidence: Joint Expert Order (Filed Jan 31, 2023); Exhibit FP-17 (timeline).

Element 3: By an Officer of the Court

The false disclosure, redacted billing, and expert reports (Exhibits JJ, OO, and III) were prepared, filed, and argued by Co-Petitioner's counsel Carol E. Glassman, her paralegal Michael LaPlume, and co-counsel Nelissa Milfeld each of whom are officers of the court under *Colo. RPC 3.3*.

The evidentiary record, including Exhibit X and the supplemented Exhibit HHAA Timeline, documents direct coordination between Glassman's office, Jay Freedberg, and Six Consulting during the drafting, editing, and filing of the expert analyses later presented as independent opinions.

The same filings were signed, certified, and argued by licensed attorneys, placing the misrepresentations squarely within the conduct of officers of the court acting in their professional capacities.

Supporting Evidence: Exhibit X; Exhibit HHAA; Exhibit III; Exhibit III-UR; Exhibit JJ; Exhibit OO; FP-17.

Element 4: That Defiles the Integrity of the Court

The conduct must corrupt the judicial process itself and undermine public confidence in the impartial administration of justice. The false authorship and concealment of billing details led the Court to treat fabricated reports as genuine expert evidence, resulting in reliance within the Permanent Orders. The deception misled the Court's factual findings on income, valuation, and maintenance.

Supporting Evidence: Permanent Orders (Filed Nov 7, 2023); Exhibit JJ; Exhibit OO; FP-17.

Element 5: That Cannot Be Cured by Standard Means

Fraud upon the court cannot be remedied through normal motions or appeal; it requires extraordinary relief. The fraud was not discoverable during trial because the authorship evidence (III-UR) was concealed until after appeal. The appellate ruling in 24CA0141 reversed only a fee award for lack of evidentiary support but did not expose

the underlying fabrication. Only this Court can now correct the record under Rule 60(b) (final paragraph).

Supporting Evidence: Exhibit III-UR; FP-17; Colorado Court of Appeals Case 24CA0141 (Remand Order).

Summary

Each of the five *Baker* elements is satisfied by verified evidence. The false June 16, 2023 disclosure and subsequent filings were intentional, directed at the tribunal, committed by officers of the court, corrupted judicial integrity, and remain uncorrectable by standard means. Together they establish a textbook case of **fraud upon the court** under **C.R.C.P. 60(b) (final paragraph)** and Colorado precedent (*Lackey, Gance, Buckley*).