

First Judicial District Division 8 CourtRoom 520 Hall of Justice 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE D. GARTIN - Defendant	Case Number: <b>04CR2541</b>  Division 8
First Secured Party for the “Defendant” In Propria Persona: Steve Douglas Gartin P.O. Box 70185 Albuquerque, NM 87197 Email: <a href="mailto:sheriffsteve@justice.com">sheriffsteve@justice.com</a>	CourtRoom: 520
<b>FIRST AMENDMENT PETITION FOR REDRESS OF          GRIEVANCE <i>IN THE NATURE OF A MOTION TO</i>          DISMISS FOR LACK OF SPEEDY TRIAL</b>	

**STANDING:**

Steve Douglas Gartin, is *First Secured Party for the above captioned* “Defendant” deliberately and consistently spelled in all capital letters to denote a Transmitting Utility pursuant to U.C.C. Security Agreement #SDG0911200-SA or a strawman “corporate person,” in Admiralty/Maritime Prize and Booty courts and is *designated in this secret and undisclosed lawform as* STEVEN DOUGLAS GARTIN.

Secured Party’s priority interest is legally established as first-in-line and first-in-time and remains unrefuted by official record: U.C.C. # SDG9112000-SA on file with the Colorado Secretary of STATE.

First Secured Party appears, Non-voluntarily, by Special Visit in propria persona by the Doctrine of Necessity; under credible threat of assault and incarceration by heavily armed Police, under duress induced by numerous forcible imprisonments based upon an unbroken chain of groundless and frivolous charges, *including this instant matter*, and coercion compelled by threat of economic damages and forcible imprisonment or death by Police due to the slanderous entry in the NCIC/CCIC database recorded by the Colorado State Attorney General’s Office Investigator Gary Clyman.

**JURISDICTION:**

First Secured Party is *Child of יהוה יי* (YHVH-the EverLiving God), a sovereign Inhabitant of the California Republic, currently sojourning in New Mexico and claims all Rights secured by the 1849 California Constitution, the New Mexico Constitution, the Treaty of Hildago, the Colorado Constitution, as well as the Original Jurisdiction Constitution for the united States of America, the Supreme Law of the Hebrew People, the Torah of יהוה יי, and the Common Law and hereby provides Notice of Foreign Law in good faith accordance with your colorable codes.

📖 [C.R.S. 24-12-101. Form of oath. Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the

following form: The person swearing, with his hand uplifted, shall swear "by the everliving God".]

First Secured Party has denied and squarely Challenged Jurisdiction at each and every Special Appearance under threat, duress and coercion and continues to protest the court's unjustified seizure of jurisdiction sans appellate record and without due process of law or adherence to constitutional or statutory mandates.

Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist "sub silentio" but must be proven. Hagans v. Laving, 415 U.S. 528, 533, n. 5; Monell v. N.Y., 436 U.S. 633. Mere "good faith" assertions of power and authority (jurisdiction) have been abolished. Owen v. Indiana, 445 U.S. 622; Butz v. Economou, 438 U.S. 478; Bivens v. 6 unknown agents, 403 U.S. 388.


### **SPECIAL APPEARANCE**

First Secured Party has never knowingly, deliberately nor intentionally joindered with this Court of Un-Disclosed Jurisdiction. Any and all interaction with the First Colorado STATE Judicial District, Inc. has been under threat, duress and coercion. At no time has either the "Defendant" nor its First Secured Party volunteered into or in any manner contracted with the First Judicial District, Inc. to adjudicate any aspect of the matter known in un-disclosed legal fiction as 04CR2541.

However, there would be grave consequences should one chose to ignore the great monopoly of military force that the court wields. Bench warrants are served with up to, and including, lethal force, arrest, confinement and extorted joinder in the form of a bail contract.

The institution of this controversy was commenced in just such a manner. First, another secret charge with a warrant issued, rather than the summons, preferred by your own C.R.S. Then, the set-up, in this instance it was Thomas Cecil "Doc" Miller's attorney, Kevin Massaro, Esquire in conspiracy with the "arresting agency" the Colorado State Attorney General's Office Special Prosecution Unit, Marleen M. Langfield and Investigator Gary Clyman. The place was the Boulder County CourtHouse and the Boulder County Sheriff's Office provided the arrest mechanism, although the computer warrant was issued NationWide and any police anywhere in the United States would have initiated arrest procedures, up to lethal force, based upon that computer entry.

**Defense hereby registers complaint for violation of the Right to Speedy Trial pursuant to C.R.S. §18-1-405.**

 *Defendant cannot stand mute and allow trial schedule to be adopted without registering his complaint that such schedule violates his speedy trial rights. People v. Atkins, App.1994, 885 P.2d 243, rehearing denied, certiorari denied.*

An accused person's **right to a speedy trial is ultimately grounded on the federal and state constitutions**, and statutes relating to speedy trial are intended to render these constitutional guarantees more effective. Simakis v. District Court, 194 Colo. 436, 577 P.2d 3 (1978).

The constitutional right to a speedy trial derived from the federal and Colorado constitutions, is distinct from the statutory speedy trial right and the determination as to one does not necessarily dispose of the other. People v. Harris 914 P.2d 425 (Colo.App.1995).

- ☑ The right of an accused to a speedy trial is an important civil right, and when the constitutional mandate is invoked the matter should receive careful consideration by the courts. Ex parte Russo, 104 Colo. 91, 88 P.2d 953 (1939).
- ☑ Under circumstances where no statutory exception or constitutional right justifies delay and defendant has taken no action to effectuate or consent to delay, noncompliance with speedy trial requirements results in dismissal of charges against defendant. People v. Arledge, 1997, 938 P.2d 160.
- ☑ If the constitution, the statutes, the rules, or the case law require dismissal of prosecution because of denial of right to speedy trial, it is duty of trial court to order that the case be dismissed. People ex rel. Coca v. District Court of Seventh Judicial District 1975, 530 P.2d 958, 187 Colo.280.
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- ☑ The right of an accused to a speedy trial is an important civil right, and when the constitutional mandate is invoked the matter should receive careful consideration by the courts. Ex parte Russo, 104 Colo. 91, 88 P.2d 953 (1939).
- ☑ Right to a speedy trial has been formulated to force the prosecution to try a defendant promptly in compliance with the statutes, rules, and **constitutional requirements** of each case. People ex rel. Coca v. District Court, 187 Colo. 280, 530 P.2d 958 (1975).
- ☑ It is duty of both prosecutor and trial judge to secure and protect defendant's right to speedy trial. People v. Chavez, 779 P.2d 375 (Colo.1989); Fisher v. County Court, 796 P.2d 65 (Colo.App.1990).
- ☑ Court's practice of postponing arraignment until all pretrial matters are concluded thwarts purpose of this section and Crim.P.48 (b). People v. Chavez, 779 P.2d 375 (Colo.1989)
- ☑ Defendant must assert right. A criminal defendant has no duty to bring himself to trial; but he does have a responsibility to assert his right to a speedy trial. People v. Small, 631 P.2d 148 (Colo.) cert. denied, 454 U.S. 1101, 102 S.Ct. 678, 70 L.Ed.2d 644 (1981).
- ☑ More specifically, the Prosecution has failed to fulfill the professional and ethical responsibility of the prosecution in balancing the factors defined by Baker v. Wingo 407 U.S. 514, 533 92 S.Ct., to wit: Length of Delay: This is the triggering mechanism where as no single factor is determinative. The length of delay is presumptively prejudicial, no further balancing is necessary. People v. Small 631 P.2d 148 Colo. If the delay is inordinate, Baker v. Wingo, purposeful or oppressive it is deemed prejudicial. Pollard v. U.S. 352 U.S. 354, 361 77 S.Ct. 481 1 L.Ed.2d 393, 399 (1957).

📖 **C.R.S §18-1-405:** Trial court abused its discretion in granting continuance as sanction for defendant's failure to disclose general denial defense and his intent to cross-examine prosecution witnesses, since defendant did not have to make such disclosures, and accordingly delay caused by continuance was not attributable to defendant and such delay had to be counted when determining whether defendant was denied his right to speedy trial People v. Castro, App.1992, 835 P.2d 561, certiorari granted, affirmed 854 P.2d 1262.

**When Constitutional right to speedy trial is asserted**, it is necessary to apply ad hoc balancing test involving length of delay, reason for delay, defendant's assertion or demand for speedy trial, and prejudice to defendant. *People v. Chavez*, 1989, 779 P.2d 375.

Reason for Delay: Prosecution has not brought forth a valid reason for a delay.

Defense's assertion of the Right to speedy trial: The Defense has consistently, on the record, asked for Speedy Trial and to set a DATE CERTAIN without waiver of any constitutionally secured rights.

Prejudice of the delay to Defendant: *Moody v. Corsentino* 843 P.2d 1355 (Colo.1993). The Prosecution has demonstrated undue prejudice toward the Defense in this matter by withholding discovery and delaying trial.

The Prosecution has chosen to blatantly ignore the Constitutional speedy trial guarantees and their fiduciary responsibility to the Honorable Court and to all parties involved not to create a prejudicial situation to a Defendant.

📖 Here the Right to a Speedy Trial operates as a control on the time limits by which charges must be tried and guarantees a criminal defendant the Right to deliberate speed in prosecution of the case. S.E. Ed. S. 2.14 and 9.46 (Supra) (C.J.S. Crim.Law 578 & Seq.).

This enumerated right protects three basic defense interests:

To prevent undue economic/travel burden before trial. Accused lives in New Mexico and each trip to Colorado causes economic damages.

Minimize anxiety and concern accompanying public accusation. There has been no minimizing the anxiety in this matter; to the contrary agents for the Prosecution have intimidated witnesses, threatened prosecution of witnesses, intimidated business associates, hacked into and destroyed Accused's WebSites utilizing PassWords obtained by the unlawful seizure of Accused's business computers, published slanderous and libelous information on the World Wide Web and in local newspapers in Marin County California and endeavored in all ways possible to destroy the Accused's business relationships, friendships, family relationships and consortium.

Long delays will impair the Defendant's ability to defend against the charges. Witnesses will pass away, move, or otherwise lose probative value.

📖 Other Defense witnesses have disappeared or cannot be located. (*Smith v. Hovery* 393 U.S. 374, 377-79, 89 S.Ct.)

📖 In considering the prejudice to defendant in connection with a determination of whether defendant's right to speedy trial has been impinged upon, court must determine whether there was oppressive pretrial incarceration, whether anxiety and concern of accused were unduly extended and whether defense was impaired in any way by continuances. *People ex rel. Freed v. County Court In and For City and County of Denver*, App.1979, 592 p.2d 1355, 42 Colo.App. 272.

## **SPEEDY TRIAL ACT**

Failure to consider factors which the Act requires to be considered, or consideration of factors which the Act excludes from consideration, is contrary to law and normally reversible error. *United States v.*

Fielding, 645 F.2d 719, 721-22 (9th Cir. 1981). The trial court's determination of which factors are relevant in considering whether to grant continuance is a question of law subject to de novo review. *Id.*

The decision to dismiss for noncompliance with the Act, with or without prejudice, is reviewed for abuse of discretion. *United States v. White*, 864 F.2d 660, 661 (9th Cir. 1988). In rendering a decision whether to dismiss with or without prejudice for Speedy Trial Act violation, the district court shall make factual findings and apply them to the relevant statutory factors, and in absence of compliance with these requirements, dismissal shall be entered with prejudice. *United States v. Delgado-Miranda*, 951 F.2d 1063, 1065 (9th Cir. 1991).

The Speedy Trial Act lists three factors that a district court will consider in deciding whether to dismiss a complaint with or without prejudice:

- [1] the seriousness of the offense;
- [2] the facts and circumstances of the case which led to the dismissal; and
- [3] the impact of re-prosecution on the administration of this chapter and on the administration of justice. 18 U.S.C. § 3162 (a)(1).

The Speedy Trial Clock begins to click statutorially when the Accused is Arrested:

1. Accused Arrested: 7 June, 2005
2. 21 June, 2005 ~ undefined Court Meeting
3. July 1, 2005 ~ Judge Judy Archuleta, Esquire ⇔ 23 Days Later  
Right to speedy trial attaches with filing of a formal charge. *People v. Chavez*, 779 P.2d 375 (Colo. 1989)
4. 9 August, 2005 ~ undefined Court Meeting
5. 26 September, 2005 ~ Irregular Arraignment ~ No pre-arraignment issues were heard.
  - 📖 **It is duty of both prosecutor and trial judge to secure and protect defendant's right to speedy trial.** *People v. Chavez*, 779 P.2d 375 (Colo.1989); *Fisher v. County Court*, 796 P.2d 65 (Colo.App.1990).
  - 📖 Court's practice of postponing arraignment until all pretrial matters are concluded thwarts purpose of this section and Crim.P.48 (b). *People v. Chavez*, 779 P.2d 375 (Colo.1989)
6. 23 December, 2005 ~ Scheduled Motions Hearing
7. Trial by Jury set for 20 January, 2006.
  - 📖 Defendant must assert right. A criminal defendant has no duty to bring himself to trial; but he does have a responsibility to assert his right to a speedy trial. *People v. Small*, 631 P.2d 148 (Colo.) cert. denied, 454 U.S. 1101, 102 S.Ct. 678, 70 L.Ed.2d 644 (1981).
8. The Prosecutor has failed to bring this controversy to trial within six months of arresting the accused.
  - 📖 Right to a speedy trial has been formulated to force the prosecution to try a defendant promptly in compliance with the statutes, rules, and **constitutional requirements** of each case. *People ex rel. Coca v. District Court*, 187 Colo. 280, 530 P.2d 958 (1975).

The Honorable Court has limited jurisdiction to protect Defendant's liberty interests and due process of law pursuant to the Judge's Oath to support the Constitutions of the united States of America and Colorado.

Therefore the Defense moves the Honorable Court to Quash the Information in the above captioned case and to Dismiss the case with prejudice for violation of the Constitutional Right to Speedy Trial pursuant to its supervisory powers in the interest of substantial justice, fundamental fairness and judicial integrity.

In Good Faith,

**Tuesday, November 22, 2005**

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Steve Douglas, Gartin – *First Secured Party in Interest* - In Propria Persona

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**CERTIFICATE OF SERVICE  
VIA DEPOSIT IN U.S. MAIL SYSTEM**

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I, Steve D. Gartin, oversigned, do hereby certify that a true and correct copy of the foregoing, MOTION TO DISMISS FOR SPEEDY TRIAL VIOLATIONS was deposited in the U.S. Mail and addressed to the Honorable Court and the Prosecution on the Twenty second day of the Eleventh month in the Year of our Lord Two Thousand and Five.

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