

## **Overview of Rules 105, 106, and 57 in the PEL Coverage Document**

The Colorado Special Districts Property and Liability Pool (the “Pool”) prepared this overview of Rules 105, 106, and 57 of the Colorado Rules of Civil Procedure (C.R.C.P.) to provide information to its Member Districts – this information is not substitute for legal advice. The Pool encourages Districts to work with their legal counsel on questions or advice on related matters.

The Public Entity Liability Coverage Form (PEL Coverage Document) excludes any liability for damages resulting from claims seeking relief or redress under Rules 105 or 106 of the C.R.C.P. Further, the PEL Coverage Document provides a maximum \$50,000 reimbursement for defense costs for an action or suit for non-monetary relief. Declaratory judgment is included as an action in which relief is non-monetary.

### **A. Rule 105: Disputes over Real Property**

Rule 105, titled “Actions Concerning Real Estate,” sets the claims and processes to adjudicate the parties’ interest in real property. The typical Rule 105 actions are adjudication of: boundary, mineral, and lien rights; judicial foreclosures; leasehold interests; and quiet title/condemnation.

Damages may be ordered under Rule 105 for withholding possession of real property or the value of improvements made by a good faith adverse possessor.

### **B. Rule 106: Compelling Officials to Act and Challenging Judicial-like Decisions**

Rule 106, titled “Remedial Writs – Forms of Writs Abolished,” replaces the common law writs (habeas corpus, mandamus...). Subsections (2) and (4) are most commonly used for claims against local governments for decision-making and governing.

#### **Rule 106(a)(2) – Compelling a Non-Discretionary Action**

Rule 106(a)(2) is an action to compel a body or person, including a governmental body, to perform a non-discretionary or mandatory action; this is similar to a writ of mandamus under common law. Judgments in favor of the claimant can include damages.

#### **Rule 106(a)(4) – Challenge of a Judicial or Quasi-Judicial Decision**

Rule 106(a)(4) provides the basis to challenge judicial or quasi-judicial decisions; these actions are similar to the writ of certiorari (for decisions that are complete) and the writ of prohibition (to prevent decisions prior to the completion of the process). The challenge is based on whether the body has exceeded its jurisdiction or abused its discretion.

### **C. Rule 57:**

Declaratory judgment actions, brought under C.R.C.P. 57 and the Uniform Declaratory Judgments Law (C.R.S. § 13-51-101, et seq.), are used to challenge the validity policymaking by a governing body acting in its legislative (or quasi-legislative) role.