

Colorado Revised Statutes: Title 18: Criminal Code:
18-17-104. Prohibited Activities.

TITLE 18. CRIMINAL CODE.

ARTICLE 17. COLORADO ORGANIZED CRIME CONTROL ACT.

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(1) (a) It is unlawful for any person who knowingly has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection (1) if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), (2), or (3) of this section.

Case Notes, Annotation:

Law reviews. For article, "Civil RICO in Colorado: New Twists in the Road to Treble Damages", see 15 Colo. Law. 9 (1986). For article, "The Potential Application of RICO in the Natural Resources/Environmental Law Context", see 63 Den. U.L. Rev. 535 (1986). For article, "Civil RICO Update: The Evolving 'Pattern' Requirement -- Parts I and II", see 16 Colo. Law. 806 and 1004 (1987).

Federal case law under the federal Racketeer Influenced and Corrupt Organization Act (RICO) is instructive upon similar issues arising under the Colorado Organized Crime Control Act (COCCA), because COCCA was modeled after the federal act. Tallitsch v. Child Support Servs., Inc., 926 P.2d 143 (Colo. App. 1996); Floyd v. Coors Brewing Co., 952 P.2d 797 (Colo. App. 1997).

The absence of knowledge of the underlying fraudulent activity defeats liability under subsection (1) (a). Sender v. Mann, 423 F. Supp. 2d 1155 (D. Colo. 2006).

Trial court properly dismissed claim brought under this section where employee did not allege that employer received proceeds from pattern of racketeering and engaged in the laundering of proceeds from such activity. Ferris v. Local 26, 867 P.2d 38 (Colo. App. 1993).

Enterprise and person cannot be the same entity for purpose of alleged violation of this article. Ferris v. Local 26, 867 P.2d 38 (Colo. App. 1993).

When instructing the jury on a COCCA charge, the court should include a definition of enterprise that defines an enterprise as consisting of at least one individual and the defendant. The addition of such a definition eliminates any confusion regarding a COCCA charge against an individual defendant and the fact the enterprise must include the defendant and at least one other individual. People v. James, 40 P.3d 36 (Colo. App. 2001).

When a separate entity is formed by incorporation, the corporation constitutes an enterprise within the meaning of the statutory definition, separate from the person engaged in the pattern of racketeering activity. People v. Pollard, 3 P.3d 473 (Colo. App. 2000).

Enterprise need not be separate and distinct from the racketeering activity. People v. Cerrone, 867 P.2d 143 (Colo. App. 1993).

In order to establish "pattern of racketeering activity" under COCCA, it was not necessary to prove that the criminal acts meet standards of continuity or of relatedness to one another as those requirements have been established by judicial construction under RICO. People v. Chaussee, 880 P.2d 749 (Colo. 1994); Brooks v. Bank of Boulder, 891 F. Supp. 1469 (D. Colo. 1995); Brooks v. Bank of Boulder, 911 F. Supp. 470 (D. Colo. 1996).

"Pattern of racketeering activity", as defined in § 18-17-103 (3), can be established by proving at least two acts of "racketeering", as defined in § 18-17-103 (5), that are related to the conduct of the enterprise. People v. Chaussee, 880 P.2d 749 (Colo. 1994); Brooks v. Bank of Boulder, 891 F. Supp. 1469 (D. Colo. 1995); Brooks v. Bank of Boulder, 911 F. Supp. 470 (D. Colo. 1996).

Pattern of racketeering activity construed. Manufacturer's single scheme of efforts to market mortar and brick bonding compound for use in construction industry was not "pattern of racketeering activity". *Behunin v. Dow Chemical Co.*, 650 F. Supp. 1387 (D. Colo. 1986).

Multiple predicate acts allegedly committed in the course of perpetration of fraud on more than one victim using the same modus operandi, and which apparently would have continued but for the institution of legal proceedings, formed a "pattern of racketeering activity". *People v. Chaussee*, 847 P.2d 156 (Colo. App. 1992), *aff'd in part and rev'd in part on other grounds*, 880 P.2d 749 (Colo. 1994).

Alleged perjury and forgery in court proceedings arising from fraudulent scheme were not part of a "pattern of racketeering activity". *People v. Chaussee*, 847 P.2d 156 (Colo. App. 1992), *aff'd in part and rev'd in part on other grounds*, 880 P.2d 749 (Colo. 1994).

A "close-ended" pattern of racketeering refers to a series of related predicate acts extending over a substantial period of time concluded by the time the RICO action is brought. A period of six to seven months is not a long enough period to state a close-ended RICO claim. *Alter v. DBLKM, Inc.*, 840 F. Supp. 799 (D. Colo. 1993).

An "open-ended" pattern of racketeering involves a series of predicate acts that by their nature indicate the likelihood of continuing criminal activity. Bare allegations that defendants will engage in future similar conduct, without specific facts, will not suffice to state a RICO claim. *Alter v. DBLKM*, 840 F. Supp. 799 (D. Colo. 1993).

As long as one act included in the pattern of racketeering activity occurred within its respective statute of limitations, evidence of other prior acts may be presented to establish a pattern, even if they could not give rise to a separate prosecution due to their own statutes of limitation, provided that the acts occurred within 10 years of the final charged act. *People v. Davis*, 2012 COA 56, 296 P.3d 219.

Plaintiff must show at least one injury resulting from each of the predicate acts, but it is not necessary to establish that an injury resulted from a pattern of racketeering. *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363 (Colo. App. 1993); *Floyd v. Coors Brewing Co.*, 952 P.2d 797 (Colo. App. 1997).

To state a claim under RICO and its state law correlate COCCA, plaintiffs must allege a "pattern of racketeering activity" of sufficient relatedness and that poses a sufficient threat of continuity. *Alter v. DBLKM, Inc.*, 840 F. Supp. 199 (D. Colo. 1993).

Predicate acts are of sufficient relatedness if they have same or similar purposes, results, participants, victims, or methods of commission, otherwise are interrelated by distinguishing characteristics and are not isolated events. *Alter v. DBLKM, Inc.*, 840 F. Supp. 199 (D. Colo. 1993).

The continuity requirement involves an examination of the temporal aspect of the alleged predicate acts. *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989); *Alter v. DBLKM, Inc.*, 840 F. Supp. 199 (D. Colo. 1993).

To state a claim under subsection (1)(a), a plaintiff must plead that an injury flowed from defendant's use or investment of racketeering income, not the predicate acts themselves. *Brooks v. Bank of Boulder*, 891 F. Supp. 1469 (D. Colo. 1995).

A violation of subsection (1) is stated when at least one predicate acts results in the production of proceeds that are invested in or used to operate a separate enterprise. *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363 (Colo. App. 1993).

Investors in an alleged Ponzi scheme adequately alleged the bank into which the defendant deposited funds from the scheme used or invested income derived from defendant's pattern of racketeering in itself and defendant in violation of subsection (1)(a). Therefore, the filing of claims for relief in an amended complaint would not be futile. *Brooks v. Bank of Boulder*, 911 F. Supp. 470 (D. Colo. 1996).

Allegations adequate so that filing claims for relief in an amended complaint would not be futile where investors in an alleged Ponzi scheme alleged the bank into which the defendant deposited funds from the scheme participated in directing defendant's affairs through the commission of criminal predicate acts. *Brooks v. Bank of Boulder*, 911 F. Supp. 470 (D. Colo. 1996).

The required nexus between racketeering activities and the affairs of an enterprise is shown if the predicate acts are carried out in the conduct of the enterprise's affairs. *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363 (Colo. App. 1993).

Legal advice and representation is, by itself, insufficient to justify liability under subsection (3). *Sender v. Mann*, 423 F. Supp. 2d 1155 (D. Colo. 2006).

No conspiracy is required to establish a violation of subsection (4); an endeavor or attempt by a single person is sufficient. *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363 (Colo. App. 1993).

To state a claim under subsection (4), a plaintiff must plead with particularity an agreement to a pattern of racketeering activity and an agreement to the statutorily proscribed conduct. A conspiracy claim must fail where plaintiffs fail to allege any agreement or concerted action. *Brooks v. Bank of Boulder*, 891 F. Supp. 1469 (D. Colo. 1995).

Mere association with conspirators, even with knowledge of their involvement in a crime, is insufficient to prove participation in a conspiracy. *Sender v. Mann*, 423 F. Supp. 2d 1155 (D. Colo. 2006).

Indictment sufficiently alleged a violation of the act where it gives the defendant notice of the crime allegedly committed and defines the acts which formed the basis for the crime with sufficient particularity. *People v. Edebohls*, 944 P.2d 552 (Colo. App. 1996).

Information sufficiently alleged a violation of the act because, although the charge under the act failed to allege other crimes, the information contained separate charges of such other crimes. *People v. Pollard*, 3 P.3d 473 (Colo. App. 2000).

The allegation of a completed act under subsection (1), (2), or (3) includes an allegation of an attempt to violate subsection (4). *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363 (Colo. App. 1993).

Allegations of secondary liability through aiding and abetting state a viable claim under the COCCA. *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461 (D. Colo. 1996).

Allegations of secondary liability based on principles of respondeat superior state a viable claim under the COCCA. *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461 (D. Colo. 1996).