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Dear Ms. Culberson-Smith:

I am in receipt of your June 26 disposition of incident # 08-00653. Thank you for taking the time to review the allegations and conclusion with Ms. Cohen and others. The purpose for my writing is to seek reconsideration of that disposition on two grounds and to request conclusions of law thereon.

I. “Instituting an Action”

You concluded that Ms. Wilson’s “filing a motion” was not equivalent to the stipulated/ordered injunction language, “instituting any action.” You concluded that “instituting any action” means a new or different “lawsuit brought in court,” which —presumably— is distinguished by the assignment of a new case number. I respectfully press that this legal conclusion is clearly erroneous or, to a reasonable person, an arrant pedantry.

The Texas Court of Appeals in New Concept Construction v. Kirbyville Consolidated I.S.D.¹ specifically recognized that “instituting any action” can include something “other than a court action” (such as arbitration). Also, in City of Colorado Springs v. Tipton, the Colorado Court of Appeals, in considering an ordinance that “precludes the city from commencing ‘any ... action to collect’ use taxes after the three-year period, held that “ ‘Any’ action means ‘all’ actions.” 910 P.2d 75, 77 (Colo.App. 1995); *see also* City of Corpus Christy v. C.C. Underwood, 332 S.W.2d 583, 586 (Tex.App. 1960) (“‘Any’ means all”).

In Miller v. Hartford, 160 P.3d 408, 410 (Colo. App., 2007), the Court of Appeals discussed contractual interpretation, explaining:

We begin by giving words used in a [contract] their plain and ordinary meaning unless the intent of the parties, as expressed in the [contract], indicates that an

¹ 119 S.W.3d 468, 473 (Tex. App., 2003)

alternative interpretation is intended. Courts should not rewrite clear and unambiguous contract provisions. [citation omitted]. Dictionaries may be used to assist in the determination of the plain and ordinary meaning of words.

BLACKS LAW DICTIONARY (7th ed.) defines “action” as: (1) The process of doing something; conduct or behavior; (2) A thing done; or (3) A civil or criminal judicial proceeding.

An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong; or the punishment of a public offense. But, in some sense, **this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.**

1 Morris M. Estee, *Estee’s Pleadings, Practice and Forms* § 3 art 1 (Carter P. Pomeroy ed. 3rd ed. 1885). [emphasis added].

Under the Uniform Child Custody and Jurisdiction Enforcement Act, the Texas court had obtained jurisdiction over the custody matter and, thusly, the Colorado custody action had **terminated**. See generally *Marriage of Harrington*, ___P.3d ___ (May 29, 2008, Colo. App. No. 07CA0379) (unpublished, pursuant to C.A.R. 35(f)); and see Angela Arkin, *Interstate Family Law Jurisdiction: Simplifying Complex Questions*, 31 Colo.Law. 9 (Sept. 2002). The Colorado court maintained jurisdiction over non-custody matters, pursuant to the divided-jurisdiction principle of the UCCJEA, but had no authority to rule on custody matters. *Marriage of Harrington*, *supra*. Therefore, Wilson’s filing of a Motion under these circumstances was the functional equivalent of filing a new case and being assigned a new case number, because no custody case existed in Colorado at that time.²

Further, when confronted with an issue of contractual interpretation, the role of a tribunal is to give effect to the intent of the parties to the agreement. The clear intent of the injunction was to prevent Ms. Ryan from conducting litigation in any forum other than Texas that would undermine the jurisdiction of the Texas court that she had submitted herself unto. Conversely, the *express* purpose of Wilson’s “emergency” Motion was to undermine the jurisdiction of the Texas court (the very act that the injunction sought to prevent).


² Note, also, that the injunction contained no express or implied language to differentiate whether the “action” to be instituted must have been assigned a new case number

If the language of a contract is subject to two or more reasonable interpretations, it is ambiguous. Whether a contract is ambiguous is a question of law for the court to decide by looking at the contract as a whole in light of the circumstances present when the contract was entered.³

II. Meritorious Claims and Contentions and Candor Toward the Tribunal

The second assignment of error concerns the fact that your disposition did not address any portion of my allegations that Ms. Wilson intentionally withheld facts from the Colorado court in the course of submitting an *ex parte* Motion (RPC Rule 3.3(d)) and that the purposes for her filing were frivolous and designed to undermine the dignity and jurisdiction of another coordinate tribunal under the UCCJEA. As noted in my complaint, mother, father, and the minor child had lived outside of Colorado for several years and none claimed Colorado as a domicile.⁴ Thus, there was no basis in either law or fact or any good faith argument for the extension, modification or reversal of existing law. RPC Rule 3.1.

Respectfully submitted,



Sean Harrington

³ New Concept Construction v. Kirbyville Consolidated I.S.D., *supra*, 119 S.W.3d at 473.

⁴ Wilson asserted (by and through her attorney) in the federal case, *Harrington v. Wilson*, No. 05-cv-01858 that I was not a Colorado resident. Ryan's May 21, 2008 deposition, mailed to your office a few days ago, states that Ryan informed Wilson when she had moved to Texas in Dec. '04/Jan. '05 of her move to Texas with the minor child. Therefore, Wilson had notice that all parties to the case had not lived in Colorado in years and, therefore, Colorado could not possibly retain or exercise jurisdiction over the custody matter under the UCCJEA.