DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
In re the Marriage of: Petitioner: **CHRISTY HARRINGTON, n/k/a CHRISTY RYAN** and Respondent: **SEAN L. HARRINGTON**	⇑ **COURT USE ONLY** ⇑
Sean Harrington, *Pro Se* 197M Boston Post Road, West Suite #151 Marlborough, MA 01752	Case Number: 99DR3717 Jefferson County Case No. 30-192795-44-8A

MOTION FOR RECONSIDERATION OF MAY 4TH ORDER IN LIGHT OF NEWLY DISCOVERED EVIDENCE AND FOR DISQUALIFICATION OF BILL FYFE AS SPECIAL ADVOCATE

COMES NOW, the Respondent, pursuant to C.R.C.P. §59, to submit the within MOTION FOR RECONSIDERATION OF MAY 4TH ORDER and DISQUALIFICATION OF BILL FYFE AS SPECIAL ADVOCATE, and in support thereof, states as follows:

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1. On May 18th 2004, this Respondent asked the court to reconsider its May 4th order. Like all of the Respondent's motions over the past four years (save motions to withdraw a prior pleading), the relief requested was denied.

2. For the eighth time over the past year, the Respondent's motion that was denied was also *pro confesso*, because the opposing party filed no response or objection. (see C.R.C.P. 8§(d) Effect of Failure to Deny *"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."*; C.R.C.P. §121, District Court Practices, Determinations of Motions: *"...Failure of a responding party to file a responsive brief may be considered a confession of the motion."*; *A party waives all defenses and objections which he does not present in his answer"* Duke v. Pickett, 168 Colo. 215, 451 P.2d 288 (1969); *When an issue is tried before a court without timely objection or motion, the issue shall be deemed properly before the court despite any defect in the pleading.* Butler v. Behaeghe, 37 Colo. App. 282, 548 P.2d 934 (1976)) *If the issue raised by the pleadings is not objected to, the parties' consent is implied.* Tovrea v. Denver & Rio Grande Western R.R. Co., 693 P.2d 1016 (Colo. App. 1984)

3. In Paragraph 33 of the Respondent's May 18th motion, the Respondent stated:

> "On or about the 3rd of May, in response to Fyfe's unethical practices, Harrington filed a complaint with the State of Colorado Department of Regulatory Agencies – Mental Health Licensing Section."

And, in Paragraph 34, the Respondent asserted:

> "…it would be unlikely [for] a reasonable person to expect that Fyfe could remain impartial with a pending ethics complaint against him by Harrington."

4. On the 25th of May, 2004, just days after the filing of the aforementioned motion for reconsideration, Dr. Fyfe unexpectedly contacted the Respondent by telephone. Although he defended his decision to assess the additional fees in contravention of his contract with the Respondent and the courts earlier [valid] order and, although he mentioned that, "The judge supported me on that," he conceded that the Respondent is, "technically legally correct," and he waived the additional fees in exchange for the Respondent's implied covenant not to sue. He introduced this offer by asking, "Do you want to see your daughter this summer?" He then expressed concern that he believed the Respondent intended to sue him in Federal Court (a mistaken interpretation to a reference in a letter regarding Wilson and Ryan, not the Special Advocate). He continued by explaining that he was nearly finished with his Report and that he would recommend, at a minimum, a provision for the immediate restoration of "some kind of contact" between the Respondent and his daughter. As a caveat, he stated, "but, I need to know that you're not going to sue me." The Respondent filed an affidavit with this court, incorporated herein by reference as, "**Exhibit A**," in his "June 1st 2004 Disclosure of Exhibits," which attests to this phone call and which the Respondent requests this court to take **judicial notice** of.

5. On the 28th of May, 2004, Dr. Fyfe left a voice-message for the Respondent. In this voice-message, he indicates that he is concerned because he has learned that the Respondent had filed a grievance against him with the state licensing board. He asked the Respondent to retract the complaint and implied that this must happen first, in order for him to continue his court-ordered work in completing his Report. The Respondent filed a sworn transcription of this voice-message with this court, incorporated herein by reference as, "Exhibit B," in his "June 1st 2004 Disclosure of Exhibits," which the Respondent requests this court to take **judicial notice** of. The Respondent currently holds a digital archive of this voice-mail.

6. In both instances, described in Paragraphs 4 and 5, hereinabove, Fyfe has conditioned the completion of his work (which he states will result in some kind of immediate restored contact between the Respondent and his daughter) on the Respondent's agreement not to pursue a civil action against him and the forfeiture of the Respondent's First Amendment petitioning rights to pursue a grievance for the unethical fee-related conduct earlier alleged. Fyfe's actions, as evidenced by these instances, even if considered separately from the fee-related ethical allegations, demonstrate clearly that he is not competent or willing to execute responsibilities intimately associated with the court's decision making processes in this case without allowing his personal priorities to compete. What is not known, at this time, is if the child's best interests are

among his priorities; what is known is that Fyfe's priorities do include revenue generation and self-preservation.

7. Because Fyfe's investigation and his subsequent recommendations are an extension of judicial function, the rules and precedents governing disqualification of judges apply also to those conferred judicial authority and immunity and bias or prejudice or the appearance thereof is sufficient to warrant recusal. (See generally Richard E. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges, Little, Brown & Company, (1996); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3542).

8. For the reasons more fully set forth in Paragraphs 1 through 7 hereinabove, Fyfe should be disqualified and the all previous monies paid by Harrington (to date, $1,422.50, plus costs) refunded by Fyfe or paid directly to Harrington by the Petitioner, who requested an appointment in substitution for the preexisting Special Advocate, Natalie Van Note. A motion to reconsider in light of new circumstances or newly discovered evidence is not subject to the limitations in section (d) of C.R.C.P. §59 (UIH-SFCC Holdings, L.P. v. Brigato, 51 P.3d 1076 (Colo. App. 2002)).

WHEREFORE, the Respondent requests that this court vacate its May 4th Order, enter a new order disqualifying Dr. Bill Fyfe from the instant case and requiring that Dr. Fyfe refund all monies paid by the Respondent directly to the Respondent within 30 days of such order, and for other such relief as this court may deem proper.

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Respondent

CERTIFICATE OF MAILING

I hereby certify that on the ___ day of June, 2004, I mailed a true and accurate copy of the foregoing document via pre-paid first class mail addressed as follows:

Jefferson County District Court
100 Jefferson County Pkwy.
Golden, CO 80401

Law Office of Madeline Wilson
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Denver, CO 80206

Jefferson County D.S.S.
Attn: Kerin Dyer
Human Services Facility
900 Jefferson County Parkway
Golden, Colorado 80401-6010

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