

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SEAN HARRINGTON

Plaintiff-Appellant,

v.

MADELINE WILSON and the “LAW OFFICE OF MADELINE WILSON”;
CHRISTY RYAN;
BILL J. FYFE and COLUMBINE COUNSELING CENTER, P.C.;
LAURA ARCILISE, in her personal capacity;
LOUISE CULBERSON-SMITH, in her personal capacity;
JOHN GLEASON in both his personal and official capacity;
WENDELL PRYOR in his official capacity;
ROBERT EVANS, in his official capacity; and
the JEFFERSON COUNTY COMBINED COURT (a/k/a “THE FIRST JUDICIAL DISTRICT”),
by and through the COLORADO ATTORNEY GENERAL, JOHN SUTHERS, in his official Capacity.

Defendants-Appellees

On Appeal from the United States District Court, District of Colorado

(Edward W. Nottingham, District Judge)

D.C. No. [05-cv-01858-EWN-MJW](#)

PETITION FOR PANEL REHEARING OR REHEARING *EN BANC*

STATEMENT PURSUANT TO FED.R.APP.P. RULE 35(B)

This Petition is submitted because the panel decision conflicts with decisions of the United States Supreme Court and of the court to which this Petition is addressed and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; and the proceeding involves questions of exceptional importance, whereas the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed this same issue.

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PROCEDURAL BACKGROUND

I filed [this case in district court](#) following several years of my ex wife, Christy Ryan, and her attorney, Madeline Wilson, concealing my daughter, Shelby, from me, in violation of both a court order and state law (of two states). Concealment of this sort was first recognized as a tort in, Sheltra v. Smith, 392 A.2d 431 (1978) and, later, in several federal courts. *See e.g.*, Raftery v. Scott, 756 F.2d 335, 338 (4th Cir. 1985); Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D. NY 1978); Wasserman v. Wasserman, 671 F.2d 832, 834 (4th Cir. 1982) and Drewes v Illnicki, 863 F.2d 469, 471-72 (6th Cir. 1988). The Tenth Circuit case most similar is Johnson v. Rodrigues, 226 F.3d 1103, 1107, 1112 (10th Cir. 2000). In Hall v. Hall-Stradley, 13 Fam. L. Rep. (BNA) 1108 (Colo. Dist. Ct. Case N^o 84-CV-2865, 1986) in Denver District Court, under facts very similar to this case and which is cognizable under the Erie doctrine in this Court, a jury awarded \$60K against the custodial mother; \$60K against her new husband; and \$200K against the custodial mother's attorney for concealing a child out of state from the non-custodial father. **[Docket 27 at 1-2](#); [docket 47 at 7--8](#); [exhibit B to docket 47](#)**.

Additionally, during the course of my seven-year affair with the Colorado divorce court, I had been essentially put out of court and estopped from enforcing any of my rights by the district judge, who refused for over two years to rule on a recusal motion and, who had conspired with defendant Bill J. Fyfe, a "child and family" investigator, to extort fees from me and breach our private contract. This created both contract and Consumer Protection Act causes of action against Fyfe.¹ Not only has the Colorado Court of Appeals ruled twice in my favor on this issue (**[Docket 69 at ¶6, n.1 & 71 at § III](#)**), but Dr. Fyfe has a reputation of extortionate, tortious conduct against many others. *See*

http://www.knowyourcourts.com/Fyfe/bill_fyfe.htm

¹ I did not sue the judge, because of the doctrine of absolute immunity. This ought to have been an obvious sign that I was particularly careful about filing non-frivolous claims.

I also found myself at odds with Colorado's illusory [Attorney Regulation Counsel](#) (OARC), which does not enforce any of the Rules of Professional Conduct unless there is a fiduciary relationship between the accused attorney and complainant or unless the case has become press-worthy or political (like recent Carol Chambers Arapahoe County fiasco). When I insisted that they apply these rules to Denver attorney Madeline Wilson (who had interjected herself into my private mental health treatment; who had knowingly made false statements in sworn affidavits (and in violation of the lawyer-as-witness rule); who had made defamatory statements to third parties outside the courtroom; among other things), John Gleason, head of the OARC, threatened to silence me under the state's Supreme Court contempt authority and "his" agency crafted special rules to be applied only to me in order to suppress a justiciable controversy. I viewed this as a due process violation, because even informal disciplinary proceedings are considered judicial in nature and, as a complainant, I am a participant in those judicial proceedings. Because the attorney disciplinary system exists to protect both the legal system and the public (and I am member of both the legal system and the public), I sued the OARC under a "procedural injury" theory and under Section 1983 and I challenged the constitutionality of disciplinary rule 251.9.

In addition, I had filed an ADA request for reasonable accommodation in the state court. My request was *not* denied; it was ignored. That created a cause of action. I also complained about discrimination under Title II of the ADA and was retaliated against for that complaint. That, alone, created a cause of action. I also filed a complaint with the state's Civil Rights Division, who responded that they will not enforce the state equivalent of the ADA in court buildings or relating to court processes. After [Tennessee v. Lane](#) and others, that is clearly unlawful. Consequently, I sued that agency under [ex Parte Young](#) for prospective, injunctive relief to enforce the statutes.

The Trial Court Proceedings

Because a Plaintiff is “the master of his claims” (Karnes v. Boeing Co., 335 F.3d 1189, 1192 (10th Cir. 2003)), I elected to consolidate all of these issues into one case. I had the right, under diversity jurisdiction, to pursue this case in federal court, rather than state court (Caterpillar v. Williams, 482 U.S. 386, 398-99 (1987)), as there was no requirement for me to put these claims through a divorce court, even if I had not been put out of that court, as explained above.

The magistrate judge of the lower court had been directed by Order of Reference dated September 27th 2005 under 28 U.S.C. § 636(b)(1)(A) and D.C.Colo.LCivR 72.1 to submit either a recommendation that would completely dispose of the case or a brief status report by March 27, 2006. [Docket 2 at 3](#). Not until September 2006 —approximately ten months after the last Motion to Dismiss had been filed— did he release his forty-one page Recommendations ([Docket 73](#)), wherein he concluded that the trial court lacked subject matter jurisdiction over claims against Defendant Wilson that were based on duplicative temporary restraining orders that she obtained; that the court should abstain from hearing the remaining claims except those against Defendants Gleason and Culberson-Smith, and that I lacked standing to bring claims against Gleason and Culberson-Smith. [Docket- 73 at 13-14](#). The magistrate further offered, “a few alternative bases for dismissal of some of the plaintiff’s claims.” My statutory Consumer Protection Act claims arising from Massachusetts, Minnesota or Colorado; my ex Parte Young claim against Wendell Pryor; and my constitutionality challenge to disciplinary rule 251.9 were all **ignored**.²

² The magistrate asserted erroneously that, “Plaintiff seeks monetary relief as to all claims.” [docket-#-73-at-8](#). Plaintiff asserted claims under Ex Parte Young, strictly for prospective injunctive relief against the Attorney General and Defendants Pryor and Gleason. [1st-Amd.-Compl.-¶¶-11,-293--and-pp.-95---96; docket-#-60-1-at-11](#).

I had until midnight of September 26th 2006 to submit objections. [Docket 77](#). I prepared a fully-hyperlinked “digital brief,” which was based on my consultation with Chris Vagner, the ECF project manager, who explained that hyperlinked e-briefs were accepted and encouraged.³ [Docket 102](#). However, five days before the deadline, the trial judge, Nottingham, dismissed my suit, erroneously concluding that no timely objection was filed. [Docket 74](#). I moved for reconsideration ([docket 77](#)) and timely submitted my brief. [Docket 76](#). When he received a notification through CM/ECF that I had filed objections *after* he had already dismissed the case, he took note of the number of pages on the document history display and became very cross.⁴ In his renewed Order of dismissal, he wrote:

It is hard to imagine a more frivolous, burdensome, prolix, senseless, and harassing filing than the one containing Plaintiff’s objections. The objections themselves are spread over 2,610 pages, and the exhibits occupy an additional sixty pages. The bulk of the filing consists of an apparently random mixture of copies of cases and exhibits. It is impossible to follow or make sense of this heap, and any attempt to do so would require abandonment of all other cases . . . The objections to the recommendation are “redundant, immaterial, [and] impertinent,” Fed. R. Civ. P. 12(f) and will be stricken.

[Docket 80 at 2](#). From this unprovoked assailment, it’s evident that Judge Nottingham didn’t even look at the objections.⁵

³ Subsection X of the court’s Electronic Filing guidelines specifically authorizes the use of hyperlinks either to another portion of the same document or to Web sites. This Court, also, accepts fully-hyperlinked briefs. See October 20th 2004 Emergency General Order *In re: Electronic Submission of Selected Documents*, amended January 1st 2006 (“Briefs may contain hyperlinks to cases and authorities”).

⁴ For purely IT technical reasons related to limitations within the district court’s ECF software, which are more fully set forth in my Opening Brief at pp. 5 – 6, and which were beyond my control, the trial judge, Nottingham, mistook my brief as a 2,610 page brief, rather than a 68-page brief.

⁵ (if he did, he would have seen the plain explanatory notice on the first page; he would’ve known that all but one of the exhibits were unpublished opinions (required by D.C.Colo.LCivR. 7.1(D) to be attached as a formality and not requiring his attention); and he wouldn’t have mistaken the document as something other than a 68-page brief) - see Op. Brief at pp. 5-6 for technical information.

In what appears to have been a *sua sponte* exercise of the court's inherent power in the nature of sanctions (but, without applying an Ehrenhaus analysis),⁶ Judge Nottingham added "with prejudice" to this second dismissal for want of jurisdiction. *Id.* I moved for reconsideration (docket #'s 81 & 82) and submitted an amended (non-hyperlinked) version of the brief. *Id.* Judge Nottingham denied my Motion without comment, thereby declining to de novo review *any* form of the objections. Docket 83. Then, after Judge Nottingham had dismissed the case for want of jurisdiction, thereby depriving the court from ruling on the merits, he adjudged the case as, "vexatious and frivolous." Docket 114. This appeal followed, docketed September 28th 2006.

The Determination of the Appeal

On June 7th 2007, without oral argument, [this appeal](#) was submitted to the panel on the merits, pursuant to Rule 34. **On that same day**, the case was affirmed with a [567-word decision](#). Judge McConnell, writing on behalf of the panel, declared that this case is affirmed primarily because he believed that it was:

only the latest installment in a long-running custody battle for Mr. Harrington's only child, a battle waged largely in Jefferson County, Colorado, District Court over a span of six years. In that time, Mr. Harrington has launched a barrage of motions, actions, and petitions aimed at regaining access to, if not custody of, his daughter, Shelby, which he lost upon his divorce in May 2000. Frustrated at his lack of success in state court, Mr. Harrington brought his campaign to the federal court system

Judge McConnell concluded that "Most of [Harrington's] claims do not belong in federal court. The rest are without merit," providing no indication as to which claims he believed did not belong in federal court and which were "without

⁶ Ehrenhaus v. Reynolds, 965 F.2d 916, 921 (10th Cir. 1992)

merit.” Judge McConnell then summarized some of the magistrate’s recommendations and concluded, “The magistrate judge’s opinion is thorough. His analysis is sound. We see no need to embellish here.”

SUMMARY OF THE ARGUMENT

The Tenth Circuit Practitioner’s Guide advises that, “Petitions for rehearing should never assume an adversarial posture with the panel . . . Even though the court has ruled against a particular party, the panel has not become an adversary or an opponent, and counsel should not treat it as such in the petition for rehearing.” *Id.* at p. 70. “Challenging the position of an opponent in an argumentative way is an effective adversarial tool, but it may become counter-productive when applied to the panel opinion.” *Id.*

However, there isn’t an adversarial system, when the magistrate, who is a presenter for one of the defendant’s organizations,⁷ contrives most of the arguments *sua sponte* on behalf of the defendants and references facts that were alleged neither in the Complaint nor even by the defendants. **Op. Brief at 10-14.** Defendants’ counsels’ job is especially easy, when the trial judge strikes the plaintiff’s objections to the magistrate’s recommendations because the trial judge misunderstands the effect of hyperlinks on ECF documents and, as a result, the objections and legal arguments are never considered.

Similarly, meaningful appellate review (especially *de novo* review of legal issues) does not occur, when the panel on the merits includes in its analysis neither the [Complaint](#) (which is the basis upon which the case is being dismissed), nor the [Opening Brief](#), nor the [Answer Brief](#), nor the [Reply Brief](#), yet summarily affirms dismissal the very day the case was assigned to the panel and relies on unpublished opinion practice to facilitate the departure from established law and to apply a different legal standard to me (and only to me),

⁷ http://www.knowyourcourts.com/divorceIndustry/docs/2007-02-13_memo-toChiefJudgeBabcock.pdf

without changing the established law. The mere fact that I was involved in divorce litigation in Colorado and a variety of collateral actions (initiated against me or that I initiated) has been used as a pretext to deny me of my right as a U.S. citizen to redress. I refer to this as the “**because-I-said-so doctrine**,” because it is not otherwise a legally cognizable basis for anything.

During my experiences, described hereinabove, a number of persons overreached themselves and overstepped appropriate bounds in the actions and inaction that they took. To the extent that these actions and inactions were unlawful or tortious and caused injury, I am entitled to legal redress and I have sought redress in a legally and morally appropriate fashion. The fact that I am *pro se* or have been wrongly perceived as a “disgruntled litigant non-custodial father” does not, in any way, have bearing on my rights as a citizen of this country to be treated with respect and granted appropriate due process. The purpose of the civil law is to provide people (like me) with a method of redressing their grievances that is designed to prevent them from engaging in inappropriate self-help. However, an appellate decision, such as the one issued in this case, erodes public confidence in the both judiciary and the civil law alternative to self-help.

I exercised my statutory right to file a timely appeal. I paid a [docket fee](#) —almost doubled recently— of \$455 and hundreds of dollars in copying costs. I demonstrated respect for this Court, for its judges, for the opposing parties and the adversarial process by spending hundreds of hours researching the law and taking many evenings and weekends away from business and my family —my wife and toddler— to draft a meritorious appeal. I alleged specific assignments of error and submitted briefs on the assumption that they would be reviewed and weighed by circuit court judges, salaried at \$175K per year for that very purpose. Finally, I had the expectation that the circuit court and Supreme Court precedents, established legal maxims; statutes, rules and other authorities (“*the law*”) would be applied in my case as it was in the published cases that I cited and studied. If I thought for a

moment that *the law* could be shifted, like a moving target, and become unavailable in my case, I would not have wasted my time and resources or that of the opposing parties.

ARGUMENT

I. Every Appellant is Entitled to Meaningful Appellate Review as a Right

Appellate review is almost universally available in the United States, by constitution or statute, both in state and federal courts, for civil as well as criminal matters. Independent and meaningful appellate review of magistrates' recommendations and trial court decisions is a hallmark of the American justice system and a bulwark against personal fiat or arbitrary decision-making. As a fundamental part of our notion of due process, appellate review must remain vigorous, even for *pro se* appellants and, yes, even for fathers, who are perceived as critical of the states' family court systems.

Meaningful appellate review, however, means more than affording an appellant the "right" to pay a docket fee, be assigned a case number, and undertake the laborious exercise of researching, drafting and submitting a few briefs. "Granting defendant's motion to dismiss is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice." Cottrell, Ltd. v. Biotrol Int'l, Inc., 191 F.3d 1248, 1251 (10th Cir. 1999). This 567-word decision of the panel in this appeal does not constitute a cautious study. This decision bears more resemblance to a determination of an application for a Certificate of Appealability, filed by a prison inmate under 28 U.S.C. § 2253(c), than an actual civil appeal.⁸

⁸ Judge McConnell's disdain for *pro se* litigants is unmistakable with his words describing my prior efforts to seek redress as, "a barrage of motions, actions, and petitions." He neglected to include mention of the fact that, as result of my "barrage," I have prevailed on two state court appeals. I also note that it is not uncommon to read an appellate opinion, where a panel has affirmed some judgment, noting that the litigant failed to exhaust administrative remedies, failed to seek *certiorari* with the U.S. Supreme Court, failed to file a timely Rule 59 motion and a variety of

I make a comfortable living doing nothing more strenuous than thinking about things people ask me to think about. There is no heavy lifting; no shift work. I'm not required to drive through snow and I don't come home smelling of fish. When I'm done thinking about these things, I give my "opinion" about them and start thinking about something else. Anyone churlish enough to complain about such a job, anyone who —asked so little— would fail to give every case, regardless of whether it's handled by a successful attorney or a prison inmate, full consideration, is an ungrateful lout.

—Justice Wlm. W. Bedsworth, *IMPROPER PERSONA*, 45-Nov. O.C.LAW 40 (Nov. 2003)

The Standard of Review Applied was Entirely Deferential

This appellate outcome was **entirely deferential** (“The magistrate judge’s opinion is thorough. His analysis is sound. We see no need to embellish here”). Judge McConnell merely summarized the magistrate’s erroneous recommendations without any analysis, whatever, with sentences such as, “The [district] court ruled . . .” and “the district court found. . . .”⁹ What the district court ruled and what the district court found was already known; I filed an appeal to learn what *the Tenth Circuit* would find as the result of applying a de novo standard of review to legal conclusions, instead of rubber stamping of the trial judge’s rubber-stamp of the magistrate’s recommendations. Some of the issues in this appeal, warranting de novo review included:

other failures to file “motions, actions and petitions,” necessary to preserve rights. The proper conclusion here is that I am damned if I do and damned if I don’t.

⁹ For example, Judge McConnell explained that the district court found that the Rooker-Feldman doctrine precluded it from considering certain claims and he then cited the two cases, Rooker v. Fidelity Trust Co. & District of Columbia Court of Appeals v. Feldman. Merely providing the citation to these seminal cases doesn’t explain how or why the doctrine applies to temporary restraining orders that were never decided on the merits or judgments where *I* was the state court winner.

- ⇒ The applicability of Younger abstention to the facts of this case, including:
 - i. Where a litigant has been put out of state court for over two years;
 - ii. where the state court was incompetent by reason of bias to hear the claims;
 - iii. where tort, contract and unrelated state law claims cannot be joined with a marital dissolution case by a court statutorily unable to provide a jury
 - iv. Whether a district court has any discretion to dismiss, rather than stay, claims that are not redressable in the state divorce court
 - v. where the district court’s exercise of jurisdiction would not have interfered with the alleged state court proceedings

- ⇒ The determination of legal standing under my theory of “procedural injury” or under ex Parte Young or under Section 1983;

- ⇒ The applicability of Rooker-Feldman to:
 - i. claims where *I* was the state court winner;
 - ii. claims regarding temporary restraining orders that were never “actually decided” and ultimately resolved against my opponent

- ⇒ Whether the domestic exception to diversity jurisdiction is applicable to suits for monetary damages, where I was not requesting any modification or establishment of a divorce, alimony, child custody or child support decree.

- ⇒ Whether nothing other than a racial animus qualifies under Section 1985(3)

- ⇒ Whether a state entity’s refusal to acknowledge and respond to a request for reasonable accommodation under Title II of the ADA gives rise to a cause of action

- ⇒ Whether retaliation for the filing of a grievance complaining of discrimination under Title II of the ADA is entitled to a separate inquiry

- ⇒ Whether allegations of discrimination under Title II of the ADA is subject to a heightened pleading standard.

One of the principal issues I raised was that the district judge did not read and consider my objections to the magistrate’s recommendations (because he struck them in an arbitrary and capricious manner). Rather than provide appellate review of that (or *any* other) assignment of error, the panel simply repeated what the trial judge had just done, undertaking no analysis of *even one* assignment of error (such as, for example, that I was deprived of any opportunity to amend my Complaint for a period of eighteen months). This, I believe,

is because the panel did not examine the Opening Brief, the appellees' Answer Brief, my Reply Brief, my objections to the magistrate's recommendations or the Complaint.

Meaningful Appellate Review Demands Judicial Sincerity

In his recently published work, *THE PRINCIPLE OF JUDICIAL SINCERITY*,¹⁰ Professor Micah Schwartzman eloquently expresses the essence of this argument:

Judges are charged with the responsibility of adjudicating legal disagreements between citizens. As such, their decisions are backed with the collective and coercive force of political society, the exercise of which requires justification. It must be defended in a way that those who are subject to it can, at least in principle, understand and accept. To determine whether a given justification satisfies this requirement, judges must make public the reasons for their decisions. Those who fail to give sincere legal justifications violate this condition of legitimacy. They act against the demands of the adjudicative role assigned to them.

II. The mere existence of Domestic Relations Overtones is not a cognizable legal basis for dismissing a case

Judge McConnell did not cite to any legal doctrine, statute, rule or case to support his order and judgment affirming the dismissal of this suit based upon the mere existence of prior (or pending) "custody" litigation. Honestly, I'm just not sure how many more times or ways I could have alleged and argued that this federal civil action is not about "custody." I alleged it in Paragraph 4 of my Complaint (**docket 22**), which is supposed to be the controlling document under Rule 12(b):¹¹

Plaintiff does not ask this Court to modify or change custody, "resolve" parental conflicts over the custody of a

¹⁰ (June 2007), Univ. of Va, Public Law and Legal Theory Working Paper Series N^o 69

¹¹ The word "complaint" doesn't appear anywhere in the Order affirming dismissal. Judge McConnell looked beyond the four corners of the parties' filings (*e.g.*, to the magistrate's recommendations) to erroneously conclude that this is a custody case wrongly prosecuted in federal court.

minor child or adjust family status. Instead, Plaintiff seeks remedies that can-not be obtained in State court domestic relations proceedings (esp., damages for tortious conduct or conduct out of contract and civil rights violations). Plaintiff's allegations of civil conspiracy to conceal a minor child, intentional infliction of emotional distress, aiding and abetting, and others are independent claims that could not have been properly put to a jury and must be brought in a collateral action.

Then, I argued it in responses to dismiss throughout the lower court proceedings. *See, e.g., docket 27*, Pp. 12-13. Then, I argued it in my Opening Brief under Ankenbrandt v. Richards, 504 U.S. 689, 701 (1992), reaffirmed in Marshall v. Marshall, 547 U.S. 293 (2006). **Op. Brief at 22-23**. I even discussed the detailed and instructive analysis in Justice Blackmun's concurrence in Ankenbrandt. *Id* at 23.

III. A Case Dismissed for Want of Jurisdiction Cannot be Dismissed "with Prejudice"

Because the principle briefs were given no consideration, the panel may have been unaware that that this case, dismissed for want of jurisdiction, was also dismissed **with prejudice**. I have filed a separate Motion for Clarification, asking the panel to clarify whether its June 7, 2007 unpublished order and judgment adopts only the recommendations of the magistrate judge and does not adopt or affirm the portion of the district judge's order that dismissed this lawsuit with prejudice.

IV. Unpublished Opinion Practice Has Been Employed to Unconstitutionally Deprive Me of Procedural Due Process

When due process does not obligate the state to establish an avenue of judicial redress (such as attorney regulation grievance process), once the state does so, "these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." Rinaldi v. Yeager, 384 U.S. 305, 310 (1966).

Under the new jurisprudence created by this Court's May 8th 2007 published decision in Smith v. U.S. Court of Appeals, N^o 04-1468, I have standing to sue and to complain about the practice of non-precedential opinions that deviate from established law and apply a different standard to me (and only to me), without changing the law.¹² Accordingly, I am objecting to non-publication in this case and, requesting that it be published, in the event that this Petition for Rehearing is denied and the June 7th 2007 Order and Judgment stands. To illustrate, the following are a few new precedents that would have been created in the Tenth Circuit, if the June 7th 2007 Order and Judgment, incorporating the magistrate's recommendations by reference, had precedential value:

- ⇒ courts are now once again allowed to engage in exercising hypothetical jurisdiction. (**Op. Brief at 9**)¹³
- ⇒ a state entity is no longer required to answer or respond to a request for reasonable accommodation under the Americans with Disabilities Act (**Op. Brief at 40**)¹⁴
- ⇒ a litigant, who was once a party to a divorce action at one time, may not file a contract or tort claim against any person for any reason, if that person was an opposing party in the divorce action. (**Op. Brief at 22-24**)¹⁵
- ⇒ Rooker-Feldman may now be used for temporary restraining orders, where the merits of the case had never been "actually decided" (**Op. Brief at 16**)¹⁶

¹² In Smith, this Court declared that, "The proper means for objecting to the non-publication of that decision would have been by petition for rehearing in this court and/or petition for certiorari review by the Supreme Court."

¹³ — overturning Steele Co. v. Citizens for a Better Environment, 523 U.S. 83, 93-94 (1998).

¹⁴ — conflicting with 28 C.F.R. § 35.160(b)(2); Duvall v. Kitsap County, 260 F.3d 1124, 1136, 1139 (9th Cir. 2001); Colorado's publication, *COLORADO JUDICIAL DEPARTMENT - ACCESS TO THE COURTS: A RESOURCE GUIDE TO PROVIDING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES - FOR JUDICIAL OFFICERS, PROBATION AND COURT STAFF*; Colorado Chief Justice Directive 04-07 at ¶¶ 3-4; and Albert v. Smith's Food & Drug Centers, Inc., 356 F.3d 1242, 1252 (10th Cir. 2004).

¹⁵ — overturning Ankenbrandt v. Richards, 504 U.S. 689, 701 (1992); conflicting with Korby v. Erickson, 550 F. Supp. 136 (S.D. N.Y. 1982); Lannan v. Maul, 979 F.2d 627, 631 (8th Cir. 1992); Catz v. Chalker, 142 F.3d 279, 291-92 (6th Cir. 1998); Raftery v. Scott, 756 F.2d 335, 338 (4th Cir. 1985); Wasserman v. Wasserman, 671 F.2d 832, 834 (4th Cir. 1982); Drewes v Illnicki, 863 F.2d 469, 471-72 (6th Cir. 1988); Johnson v. Rodrigues, 226 F.3d 1103, 1107 (10th Cir. 2000).

- ⇒ Rooker-Feldman may now be used to preclude cases brought by state court *wi*
ners, in addition to state court losers; *Id.*
- ⇒ Rooker Feldman is applicable when a plaintiff is seeking prospective relief (**Op.**
Brief at 17)¹⁷
- ⇒ a divorce case is considered both pending and adequate for the purposes of the
Younger abstention doctrine even if the case has been "suspended" for over two
years (thereby putting the litigant out of court); even though a Colorado divorce
court cannot provide a jury; even though the contemplated federal proceedings
would not have interfered with the alleged state proceedings; and even though tort
and contract claims cannot be joined in domestic relations proceeding in Colorado.
(**Op. Brief at 17 - 22**)¹⁸
- ⇒ a racial animus **only** is valid for a 42 U.S. § 1985(3) claim. (**Op. Brief at 35-36**)¹⁹
- ⇒ a complaint regarding retaliation under the Americans with Disabilities Act is no
longer subject to a separate inquiry (**Op. Brief at 41**)²⁰
- ⇒ a *pro se* litigant, who was once a party to a divorce proceeding, has no right to en-
force contract or consumer protection act claims against a child and family investi-
gator, who breached a contract in bad faith; (**Reply Brief at 12**)

¹⁶ — overturning Merrill Lynch Bus. Fin. Svcs., Inc. v. Nudell, 363 F.3d 1072, 1075 (10th Cir. 2004); Pittsburg County Rural Water Dist. No. 7 v. City of McAlester, 358 F.3d 694, 708 n.3 (10th Cir. 2004).

¹⁷ — overturning Mo's Express, LLC v. Sopkin, 441 F.3d 1229, 1234 (10th Cir. 2006).

¹⁸ — conflicting with New Orleans Public Service, Inc. v. Council of City of New Orleans, 491 U.S. 350, 361 (1989); Amanatullah v. Colorado Bd. of Med. Exam'rs., 187 F.3d 1160, 1163 (10th Cir. 1999); Diamond "D" Const. Corp. v. McGowan, 282 F.3d 191, 198 (2nd Cir. 2002); Roe N^o 2 v. Ogden, 253 F.3d 1225, 1232-33 (10th Cir. 2001); Crown Point I, LLC v. Intermountain Rural Elec. Ass'n, 319 F.3d 1211, 1215 - 16 (10th Cir. 2003); Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976); Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996); Hines v. D'Artois, 531 F.2d 726, 731-32 (5th Cir. 1976); Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715 n.2 (1962); Muhammad v. Warden, Baltimore City Jail, 849 F.2d 107, 110 (4th Cir. 1988); St. John v. International Ass'n of Machinists and Aerospace Workers, Local # 1010, 139 F.3d 1214, 1217 (8th Cir. 1998); Crystal Clear Communications, Inc. v. Southwestern Bell Tel. Co., 415 F.3d 1171, 1175 (10th Cir. 2005); Kugler v. Helfant, 421 U.S. 117, 125-29 (1975); Brooks v. N.H. Supreme Court, 80 F.3d 633 (1st Cir. 1996); Wilson v. Prentiss, 140 P.3d 288, 291 (Colo.App., 2006); Mockelmann v. Mockelmann, 121 P.3d 337, 339 (Colo. App. 2005); Simmons v. Simmons, 773 P.2d 602, 604 - 05 (Colo. App. 1988).

¹⁹ — overturning Taylor V. Gilmartin, 686 F.2d 1346, 1357, 1358 (10th Cir.1982).

²⁰ — overturning Selenk v. Med. Imaging of Colo., 248 F.3d 1249, 1264 (10th Cir. 2001); Childs v. National Jewish Center for Immunology and Respiratory Medicine, 1997 10CIR 1253, 129 F.3d 130 (10th Cir. 1997) and conflicting with Shellenberger v. Summit Bancorp, 318 F.3d 183, 188 (3rd Cir. 2003); Wright v. CompUSA, Inc., 352 F.3d 472, 477-78 (1st Cir. 2003).

- ⇒ a case dismissed for lack of jurisdiction may now be dismissed with prejudice; (**Op. Brief at 9**)²¹
- ⇒ a judge may characterize the case as frivolous and vexatious (*i.e.*, rule on the merits of a case) that was just dismissed for want of jurisdiction. (**Op. Brief at 9**)²²
- ⇒ under Fed.R.Civ.P. 72(b) and 28 U.S.C. § 636, an article III judge no longer needs to consider objections to the recommendations of a magistrate judge. (**Op. Brief at 8**)²³

CONCLUSION

For the forgoing reasons and based on the foregoing authorities, consideration by the full court is necessary to secure and maintain uniformity of the court's decisions; and to apply a de novo standard of review to important legal questions of exceptional importance, in conformity with the authoritative decisions of other United States Courts of Appeals that have addressed these same issues.

Dated: 21 June 2007:



Sean L. Harrington, appellant

²¹ — overturning Brereton v. Bountiful City Corp., 434 F.3d 1213, 1216 (10th Cir.2006).

²² — conflicting with Ray v. Eyster, 132 F.3d 152, 155 (3rd Cir. 1997) and Frederiksen v. City of Lockport, 384 F.3d 437, 438 (7th Cir. 2004).

²³ — overturning Gee v. Estes, 829 F.2d 1005, 1008-09 (10th Cir.1987) (*per curiam*); Northington v. Marin, 102 F.3d 1564, 1570 (10th Cir. 1996).

CERTIFICATE OF SERVICE

I hereby certify that on *June 21st 2007*, I sent a copy of the within PETITION FOR REHEARING of by way of United States mail or by electronic means, as designated hereinbelow, and affixed hereto:

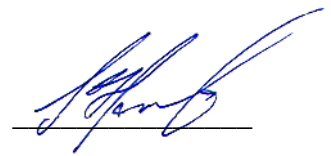
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A handwritten signature in blue ink, appearing to read "B. Huff", is written over a horizontal line.

* service by electronic means was expressly authorized by this recipient.