

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	
Sean Harrington, <i>Pro Se</i> 197M Boston Post Road, West Suite #151 Marlborough, MA 01752	↑ COURT USE ONLY ↑ Case Number: 99DR3717 Jefferson County Case No. 30-192795-44-8A
RESPONDENT’S MOTION FOR RECONSIDERATION OF AUGUST 30TH ORDER	

COMES NOW, the Respondent, Sean Harrington, pursuant to C.R.C.P. §§59 to submit the within Motion for Reconsideration of August 30th Order. As grounds, Respondent states as follows:

1. On the 30th of August, this court entered an Order which “stayed,” Respondent’s Rule 60(b) Motion for Reconsideration of August 16th Order and Motion for Substitution for Judge.
2. For the reasons more fully set forth, hereinbelow, the Order entered on August 30th, 2004, is voidable and is an abuse of discretion.
3. The four-year Record in the instant case has shown that this trial court is predisposed to deny every application for relief by Respondent, without regard for the applicable rules, statutory authority, case precedent, equity considerations or to serve the ends of justice. As such, this Motion will also be denied. Further, the law never requires a futile act, such as the filing of the within Motion. (See *Ohio v. Roberts*, 448 U.S. 56, 74 (1980); and see *Hull v. State of Texas*, NO. 1812-00 (Crim. Appeals Tex. 2002) (“*It is axiomatic that the law does not require a futile act...A motion to recuse would have been equally futile and destined to provoke the increased wrath of the trial court.*”)).
4. However, despite the declaration made in the preceding paragraph and irrespective of this court’s disinclination to acknowledge or correct any assignment of error in the instant case, it is Harrington’s responsibility to create a record in the Trial Court, first, in order to preserve the issue for appeal (see *e.g., Aguilar v. State*, 26 S.W.3d 901, 903 (tex.Crimm.App 2000) (“*potential errors must be called to the attention of the trial court when the grounds for the error become apparent, giving the trial court an opportunity to avoid or correct potential error.*”))
5. It is well settled that, “[o]nce a party enters an appeal, . . . the court issuing the judgment or order from which an appeal was taken is divested of jurisdiction to act on motions to rehear or va-

cate.” Commonwealth v. Cronk, 396 Mass. 194 (1985) However, this only tells half the story, because, “[T]he district court retains jurisdiction over 'collateral matters not involved in the appeal.’” Lancaster v. Indep. Sch. Dist. No. 5, 149 F.3d 1228, 1237 (10th Cir. 1998) (quoting Garcia v. Burlington Northern R. Co., 818 F.2d 713, 721 (10th Cir. 1987). At the time that this court entered its August 16th Order [denying a Rule 60(b) Motion], for which the Respondent subsequently pursued a Rule §59 Motion for Reconsideration, this court clearly believed it had jurisdiction to decide the matter and to enter the Order. Since that time, the Respondent has not filed a new Notice of Appeal. Therefore, if this court had jurisdiction to enter the order, it certainly still must believe that it retains that same jurisdiction to decide the Respondent’s Motion for Reconsideration of that Order –unless, of course, the present decision concerning jurisdiction (as stated in the August 30th order) was capricious or arbitrary (a matter of caprice in order to prejudice the Respondent –the court has jurisdiction, for example, to grant Bill Fyfe’s request¹ to penalize Harrington (ordered on May 4th 2004), but doesn’t have jurisdiction to decide the County Attorney’s Motion (which sought relief favorable to Harrington);² the court has jurisdiction to enter the August 16th order denying Harrington’s relief, but now (suddenly) lacks the jurisdiction to reconsider the order).

6. Finally, there is the matter of the Motion for Substitution of Judge, a matter which was also, “stayed,” by this court’s August 30th order, citing the pendency of the appeal. Indeed, a one-year prior Motion for Recusal is currently an issue on appeal. However, the more recent Motion deals with new allegations –namely, a conspiracy to deprive Harrington of access to the courts through various means (illustrated with yet another fresh example, described in the preceding paragraph). And, indeed, this court always retains jurisdiction to determine whether the presiding judge has a duty to preside or a duty to recuse, based on the sufficiency of facts in the Motion, supported by affidavit. In fact, the court not only retains jurisdiction, but the court *is required* to decide the Motion and, “*Upon the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon.*” C.R.C.P. §97 (See Dominic Leone Constr. Co. v. District Court, 150 Colo. 47, 370 P.2d 759 (1962); Brouwer v. District Court, 169 Colo. 303, 455 P.2d 207 (1969); City of Trinidad v. District Court, 196 Colo. 106, 581 P.2d 304 (1978) (“A motion to disqualify the judge has the effect, as a matter of law, of suspending any further proceedings until the judge rules on the motion to disqualify.”))

WHEREFORE, for the reasons more fully set forth hereinabove, the Respondent requests this court to reconsider and vacate its August 30th order.

CERTIFICATE OF MAILING

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

Jefferson County District Court
100 Jefferson County Parkway
Golden, CO 80401

Law Office of Madeline Wilson
501 S. Cherry Street, Suite 610
Denver, CO 80246-1328

¹ The issue concerning the Special Advocate appointment (Natalie Van Note & Bill Fyfe) was one of the issues on appeal; thus this court did *not* have jurisdiction to create orders concerning the appointment.

² This Motion concerned child support arrearages, an issue which was not on appeal, then, and which this court *did* have jurisdiction to decide, but elected not to.