

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	↑ COURT USE ONLY ↑ Case Number: 99DR3717 Division 3
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	
MOTION FOR JUDICIAL REVIEW OF MAGISTRATE'S DETERMINATION	

COMES NOW, the Respondent, Sean Harrington, pursuant to C.R.M. § 7(a) to submit the within Motion for Judicial Review and, as grounds, states as follows:

1. On or about the 20th of December, 2004, Respondent filed a Motion to Permit Testimony by Telephone.

2. As grounds for his request, Respondent argued that neither party would be prejudiced by telephone testimony on the part of Respondent, since the issue demonstrating that Petitioner has complied with the court's order is the Petitioner's burden of proof and is primarily between her and the court. Respondent has already satisfied the *prima facie* threshold showing, through verified motions, that Petitioner has failed to comply with the trial court's orders, else the citation would not have issued.

3. Additionally, Respondent argued that he has a disability requiring a reasonable accommodation under the Americans with Disabilities Act. Notwithstanding the decisions of several cases, including *Tennessee v. Lane*, 124 S.Ct. 1978 (2004), the recently issued Colorado Supreme Court Chief Justice Directive requires that Colorado courts provide reasonable accommodations to qualifying persons with disabilities. The Respondent's mental illness, which both the Petitioner and this Court have frequently cited, is a qualifying disability for the purposes of the Americans with Disabilities Act. (*see, e.g., Hason v. Medical Bd. of Cal.*, 279 F.3d 1167 (9th Cir. 2002)). The Americans with Disabilities Act applies to persons who have been *regarded as* having a disability (*See generally* 42 U.S.C. 12102(2)). At all times material, Harrington has been regarded as disabled by this Court and by Ryan & Wilson and, which disability is fairly supported by the record. For example, on July 2nd 2003, Judge Tidball terminated Harrington's parenting time and accepted Ryan and Wilson's speculative notions of future harm, without requiring expert witness testimony, stating: "The evidence also before the Court is that the respon-

dent has testified, and previously testified, and there's been evidence before the Court that the respondent has been under the care of a psychiatrist, that he has been diagnosed with bipolar, and he has been placed on medications. . . .The petitioner has taken the position that she has concerns that he's not taking his medication on a regular basis, and that that affects his ability to communicate with her and to parent the minor child.”¹ Ryan and Wilson have alleged, consistently, for the past five years that Harrington is potentially homicidal when he does not take his medications² and they have stated, in multiple sworn affidavits and in open court that they “suspect,” that he was [at those times] not taking medications. They have argued that Harrington is unable to care for his daughter.³ Ryan has testified that Harrington is unable to make responsible decisions regarding his own care, cannot remain employed and that he is chronically suicidal. Wilson has been quoted as stating to persons unconnected to the proceedings that Harrington, “has a few screws loose,” and is, “deranged.”

4. Motions to permit testimony by telephone, pursuant to C.R.C.P. § 43(i) have been granted previously in this case –when such motions were sought by counsel for Respondent or a party other than Respondent.

¹ Reproduction and raising (parenting) children is a major life activity under the ADA.

² See, e.g., Ryan & Wilson’s July 1st 2004 Answer Brief to the Colorado Court of Appeals in Case No. 03CA1825: “[T]he father . . . appeared to have discontinued his medication for his well documented mental illness(es). . . the father’s mental illness was affecting the child . . . The mother was very concerned that the father had discontinued his medication for his bipolar condition . . . the father has been diagnosed as bi-polar and he has been prescribed medication for that condition . . . the father’s mental illness apparently greatly impairs his judgment . . . There is evidence the father became paranoid and potentially homicidal when he does not take medication. . . it is clearly not in the child’s best interests to have parenting time with an unmedicated mentally ill father . . . To infer that his mental illness is not to be considered is simply absurd . . . The totality of the evidence is clear that the father suffers from a mental illness that, when uncontrolled, results in dangerous behavior . . . The record is filled with evidence of the father’s mental illness(es)”; Ryan & Wilson’s “Emergency Verified Motion to Return Child to Mother or Motion to Restrict Parental Contact” June 30th 2003 (Jefferson County Case No. 99DR3717): “The mother believes the father has been diagnosed in the past as bi-polar and is currently prescribed medication to deal with this condition. . . The mother is very concerned that the father has discontinued his medication . . . The mother believes that the father became dangerous in the past when he discontinued his medication”; Aff. of Christy Ryan in support of § 27-10-106 Petition for Mental Health hold, July 7th 2000 (Jefferson County Case No. 00MH243): “Mr. Harrington has had several hospitalizations at West Pines at Lutheran Medical Center and St. Joseph’s PsychCenter due to mental illness. He has been diagnosed with Bipolar Disorder, with psychotic features, and Narcissistic Personality Disorder. He has also has a past diagnosis of schizophrenia. Mr. Harrington has been prescribed anti-psychotic and mood stabilizing medications, which he has refused to take. Consequently, he has deteriorated. . . He has many weapons and has threatened to use them on anyone he perceives as a threat.”; Verification in Support of Civil Restraining Order, Dec. 9th, 1999 (Jefferson County Case No. 99C15402): “History of mental illness (untreated)”

³ Ryan & Wilson’s July 1st 2004 Answer Brief to the Colorado Court of Appeals in Case No. 03CA1825: ““it is clearly not in the best interests to have parenting time with an unmedicated mentally ill father.” *Id.* at p. 18, lines 14 - 15

5. In the decision announced by the Court of Appeals in case No. 03CA1825 on Dec. 30th 2004 (relative to this case), the appellate Court held that a telephone hearing was, indeed, a full and fair hearing. Assuming, *arguendo*, that the opinion is not overturned on a writ of *certiorari* to the Supreme Court, it is unclear why this contempt hearing would not also be equally as full and fair hearing under nearly identical circumstances.

6. Magistrate Norton denied Respondent's request, noting, "The Court needs live testimony with the opportunity to judge demeanor and credibility in this matter."

7. Respondent accused Petitioner Ryan of failing to comply with two separate stipulated orders –one requiring that she surrender the tax exemption beginning in tax year 2003; the other requiring her to take co-parenting after divorce classes and therapy to deal with her hostility towards Mr. Harrington. The only issue, therefore, is whether the two orders, which are contained in the court's records, are valid and whether *vel non* the Petitioner has complied with them. There is nothing to be learned, gained, proved or disproved by Mr. Harrington's demeanor and credibility as to resolving those two questions.

8. The cost of traveling to Colorado to enforce rights under the Stipulated Agreements, solely because the Petitioner –and no one else –has contemptuously refused to comply with the Court's orders, will amount to nearly a thousand dollars in airfare, hotel and rental car accommodations, which Respondent does not have. Requiring Mr. Harrington to incur exorbitant and unnecessary costs, because he is a non-resident, to properly participate in litigation is discrimination under a "class of one" theory and violates the Equal Protection Clause. Meaningful access to the courts should not be predicated on one's ability to undertake expensive cross-country travel for matters that outside of his control, such as the Petitioner's compliance with the Court's order. *Cf. Manning v. Manning*, 136 Colo. 380, 317 P.2d 329 (1957) (Where one desires in good faith the deposition of a party living in another state before trial, he should have it, but not at a time or place involving the expense of a cross-country trip when it is shown that the nonresident party is without the necessary funds.)

WHEREFORE, the Respondent requests that the determination of the Magistrate relative to his Rule 43(i) request be judicially reviewed, that the reasonable accommodation sought by the Respondent be afforded, pursuant to Chief Justice Directive 04-07, and that the Rule 43(i) Motion be granted for all of the reasons more fully set forth, hereinabove.

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of January 2005, I mailed a true and accurate copy of the foregoing disclosure via pre-paid first class mail addressed as follows:

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

and by facsimile to: Law Office of Madeline Wilson at: 303-321-3196
