

<b>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</b> 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
<b>In re the Marriage of:</b>  Petitioner: <b>CHRISTY HARRINGTON,</b> <b>n/k/a    CHRISTY RYAN</b>  and  Respondent: <b>SEAN L. HARRINGTON</b>	
Sean Harrington, <i>Pro Se</i> 197M Boston Post Road, West Suite #151 Marlborough, MA 01752	↑ <b>COURT USE ONLY</b> ↑ Case Number: 99DR3717 Division 3
<b>SUPPLEMENT TO MOTION FOR JUDICIAL REVIEW OF  MAGISTRATE’S DETERMINATION</b>	

**COMES NOW**, the Respondent, Sean Harrington, pursuant to C.R.C.P. § 15 and C.R.M. § 7(a) to submit the within Supplement to Motion for Judicial Review and, as grounds, states as follows:

1. In Paragraph 10 of the Respondent’s Motion to Permit Testimony by Telephone, he again called to the Court’s attention the pending recusal motion, which this Court has refused to rule on. However, he inadvertently failed to restate that matter in the Instant Motion for Judicial Review of Magistrate’s Determination. The argument, as it appeared in Paragraph 10 of the former motion, and which has been repeatedly advanced by Respondent, appears as follows:

“On or about the 16<sup>th</sup> of August, 2004, Harrington filed a Motion for Substitution of Judge [Tidball]. Judge Tidball declined to rule on that motion and, in fact, stayed the motion. (Respondent requests this Court to take **Judicial Notice** of the Order dated August 30<sup>th</sup> 2004). Because the Motion is pending, the proceedings are suspended. (See, generally, C.R.C.P. § 97 (“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”); 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 rule[s] on the motion to disqualify.”)) Further, any Motion that Harrington may file subsequent to that, which submits to the authority of this Court, may waive his right to recusal. See Aaberg v. District Court, 136 Colo. 525, 319 P.2d 491 (1957) (Where a party seeks to disqualify a judge for bias and prejudice, and at the same time asks for affirmative relief by mo-

tion, appearance before such judge for any other purpose than to question his authority to act, waives the right to object to his authority). The applicability of the Aaberg doctrine is nebulous as, here, the contempt proceeding will be held before Magistrate Norton, not Judge Tidball. Nevertheless, Harrington does not waive his right to object to Judge Tidball's authority pursuant to the August 16<sup>th</sup> Motion and believes that the matter of this Court's jurisdiction and the suspension of the proceedings must be resolved by this Court before any other proceedings commence.

2. So long as the issue of disqualification remains undecided, the judge is without jurisdiction to hear any matter affecting the substantive rights of the parties. (*see generally* C.R.C.P. § 97); *see also* *People v. Bell*, 658 N.E.2d 1372 (Il. App. Ct. 1995); *Greenberg, Benson, Fisk and Fielder, P.C. v. Howell*, 685 S.W.2d 695 (Tex. Ct. App. 1984); *Johnson v. The District Court*, 674 P.2d 952 (Colo. 1984)

3. The Respondent expects that this Court will acknowledge, adopt, apply and comply with the Rules of Civil Procedure, because the Rules apply to the Court as much as they apply to the litigants. Harrington should not, however, be expected to withdraw any motion or pending request for relief because he is entitled, as a matter of right and law, to have his motions heard and ruled upon with reviewable findings. *See People v. Dunlap*, Colo., 623 P.2d 408 (1981) ("Every person has an undisputed right of access to the Colorado courts of justice"), This right exists, notwithstanding this Court's pattern of selective waiver and assumption of jurisdiction or refusal to rule on the pending recusal motion. *See Anderson v. Glass*, 727 So.2d 1147 (Fla. 5th DCA 1999) ("[P]rompt rulings promote public confidence in the impartiality of the trial judge, while delayed rulings, not only slow the litigation process, but [also] call into question the trial judge's motives"); *Tableau Fine Art Group, Inc. v. Jacoboni*, 853 So.2d 299 (Fla. 2003) ("A litigant who files a motion for disqualification should not be required to file a petition for a writ of mandamus to compel a trial judge to provide a ruling on the motion."); *G.C. & D.C. v. Department of Children*, \_\_\_ So.2d \_\_\_ (Fla. 5th DCA 1999)("once a judge has placed a movant in the position of having to file a petition for writ of mandamus just to get a ruling on a motion, the loss of confidence in the fairness of the trial judge is irreparable."); *US East Telecommunications v. US West Inf. Sys.*, 15 F.3d 261 (2<sup>nd</sup> Cir. 1994) ("A Court confronted by a motion authorized by the Rules must decide the motion within a reasonable time. . . [T]he right of a movant to have a motion decided is so clear that it will be enforced under proper circumstances by *mandamus*." (citing *Hudson v. Parker*, 156 U.S. 277, 288, 39 L. Ed. 424, 15 S. Ct. 450 (1895), *Richardson Greenshields Securities, Inc. v. Lau*, 825 F.2d 647, 652 (2<sup>nd</sup> cir. 1987)); *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11<sup>th</sup> Cir. 1997) (failure to rule on pending motion an abuse of discretion) ("Moreover, the ruling must be meaningful. It is not enough simply to deny a motion to dismiss a claim with little or no comment"). The ruling must be accompanied by a reasoned explanation of its basis. *See Tolefree v. Cudahy*, 49 F.3d 1243, 1244 (7<sup>th</sup> Cir. 1995) ("Judges should give reasons for judicial acts that are not obviously correct or plainly within the scope of the judge's untrammelled discretion over managerial and other ministerial details of the judge's work.").

4. Irrespective of the party's right to have justiciable controversies properly adjudicated, no motions can be decided until this Court fulfills its duty to rule on the pending recusal motion; "[A]ll persons are entitled to a decision that is not unlawfully withheld or unreasonably delayed." *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9<sup>th</sup> Cir. 2000).

**WHEREFORE**, the Respondent requests that, only after this court is re-vested with jurisdiction by deciding the pending recusal motion, 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 10<sup>th</sup> 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

