

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 Division 3
RESPONDENT’S REPLY IN SUPPORT OF HIS MOTION FOR JUDICIAL REVIEW OF MAGISTRATE’S DETERMINATION; RESPONSE TO PETITIONER’S REQUEST FOR ATTORNEY FEES AND MOTION FOR JUDGMENT ON THE PLEADINGS	

COMES NOW, the Respondent, Sean Harrington, pursuant to C.R.C.P. § 11, Chief Justice Directive 04-07 and C.R.M. § 7(a) to submit the within Reply in Support of Motion for Judicial Review and, as grounds, states as follows:

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1. No reply to Paragraph 1 is warranted, as the allegation was admitted in Petitioner’s Response..

 2. Respondent disagrees with Petitioner’s statement that his request for telephone testimony was properly denied. Respondent denies Petitioner’s assertion that contempt citations are routinely issued [without cause]. Rule 107 (c) clearly sets forth that citations are issued, “**when it appears to the court by motion supported by affidavit that indirect contempt has been committed.**” Citations are not issued simply because one party requests it. Respondent realleges that the matter of whether Petitioner did or did not comply with the order requiring her to attend co-parenting after divorce classes or surrender the tax exemption is primarily between her and the court. Respondent denies that it is his burden to make out a *prima facie* case in court, because Petitioner has already admitted that she has failed to comply with the orders. Petitioner did not file any answer to any of Respondent’s three Motions for Contempt Citation and Respondent requests this court to take **judicial notice** of those three §107 Motions (filed on or about June 17th, June 30th and July 12th 2004), which were filed at the direction of this court by order dated October 29th 2003. For example, in Paragraph 7 of the first of these Motions, Respondent alleged that he received a letter from attorney Wilson explaining that they would **not** surrender the tax exemption for tax year 2003. In Paragraph 6 of the second Motion, Respondent reproduced Petitioner’s testimony, during which she admitted, before this court and under oath, that she had not complied with the order requiring her

to attend co-parenting after divorce classes and therapy, as required by the stipulated order of Nov. 6th 2001. None of these or any other allegations contained in the three motions have been denied by Petitioner. Because Petitioner has admitted these allegations, upon which the Contempt citation was sought, there is no material issue of fact to be resolved. The burden is now on the Petitioner to present evidence to the court that, since the time of her admissions, she has complied with the Orders or to otherwise demonstrate her present inability to comply with the Orders. Respondent has no such burden.

3. Courts are, indeed, required to make reasonable accommodations for persons requesting them, as Mr. Harrington has recently submitted to Bob Evans, the First Judicial District's ADA Coordinator. (See *e.g.*, *Lane v. Tennessee*, 124 S.Ct. 1978 (2004); *Duvall v. Kitsap County*, 260 F.3d 1124 (9th Cir., 2001); *Memmer v. Marin County Courts*, 169 F.3d 630, 633, (9th Cir. 1999); and , 28 C.F.R § 35.130 (b)(7)[2]. Petitioner's assertion that she does not regard Respondent as disabled and/or qualified under the Americans with Disabilities Act is disingenuous and made in bad faith. Petitioner's entire case against Respondent has been predicated on their allegations of his mental health and perceived inability to care for himself or his daughter. Thus, the reversal is subject to the Invited Error Doctrine (*a/k/a* "judicial estoppel"). Under the judicial estoppel doctrine, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. *Davis v. Wakelee*, 156 U.S. 680, 689. The purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.

4. In Paragraph 4 of Petitioner's responsive pleading, they admit that telephone testimony has been previously allowed in this case and that there was no need to "see the parties' demeanor to judge credibility," when other matters of substantial liberty interests were at stake, such as the abolition of Respondent's parenting time and familial association with his child (at the hearing of July 2nd 2003). As more fully set forth, hereinabove, Respondent's demeanor has nothing to add to subtract from the determination of whether Petitioner has complied with the Orders of this Court or if she has some present inability to comply, as required under the remedial contempt provision of Rule 107(d)(2).

5. Petitioner's response, appearing in Paragraph 5 of her responsive pleading, did not address (or deny) Respondent's allegation that the Court of Appeals in case No. 03CA1825 on Dec. 30th 2004 (relative to the instant case), held that a telephone hearing was, indeed, a full and fair hearing, thus, rendering it is unclear why this contempt hearing would not also be equally as full and fair hearing under nearly identical circumstances. Therefore, it should be assumed that Petitioner agrees with Respondent. (See C.R.C.P. 8§(d) ("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").

6. No reply is necessary to Paragraph 6 of Petitioner's responsive pleading, as she has expressly admitted the allegation.

7. In Paragraph 7 of Petitioner's responsive pleading, she again elects not to address (or deny) Respondent's allegation [that Petitioner is accused 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 Respondent]. Instead, Petitioner argues that she has a right to defend herself and that Respondent does not believe in the Confrontation Clause of this country's Constitution. This allegation, which is baseless, warrants a brief digression:

Back in June of 2000, not quite five years ago, attorney Wilson colluded with her client, the Petitioner, to initiate civil commitment proceedings (JeffCo case No. 00MH243) against this Respondent. Wilson knew that Respondent would be incarcerated at the Colorado Mental Health Institute at Ft. Logan, where he could be served, but would be unable to make civil court appearances or participate in other litigation (also a violation of Title II of the ADA). The day prior to Respondent's "arrest," orchestrated by Petitioner and her attorney and the assistant County Attorney, John Thirkell, Wilson filed a restraining order on behalf of herself (case No. 00C08748), because Judge Clugston had thrown out her previous attempt (weeks earlier, JeffCo case No. 00C02389). Motions for a continuance of this [newest] hearing, filed on behalf of Respondent/defendant by his caregivers because of the civil commitment orchestrated by Petitioner and her attorney, were disregarded and the permanent restraining order hearing was held without Respondent/defendant, in violation of the Americans with Disabilities Act (*see Lane v. Tennessee*, in which the Sixth Circuit opined (without running afoul of *Rooper-Feldman*) that, "those who fail to appear in court cannot be sanctioned for failing to appear, until they have been accorded due process." 315 F.3d 680 (6th Cir. 2003) (citing *Groppi v. Leslie*, 404 U.S. 496, 502 (1972)) *affirmed* 124 S.Ct. 1978 (2004). Attorney Wilson then petitioned this court to consolidate her restraining order into the instant case (thus causing her to become an unsworn witness). Respondent then petitioned this court for a rehearing, so that he could be afforded the most basic due process provision known to this country -the right to present evidence on his own behalf. This Court, presided by Jane Tidball, answered that motion by assessing attorney fees on Respondent pursuant § 13-17-102(2), apparently concluding that a request for basic procedural due process is frivolous. Respondent requests this court to take **Judicial Notice** of that Order dated September 10th, 2000 and of the underlying pleadings.

This previous example demonstrates that it is the Petitioner and her counsel, who do not believe that a defendant should be entitled to the right to confront his accusers and to present evidence on his own behalf. In attorney Wilson's vision of jurisprudence, any father, such as Mr. Harrington, could be imprisoned for life merely at her behest and without the possibility of a trial or advance notice.

8. Petitioner denies Respondent's allegations concerning the cost of traveling to Colorado to enforce rights under the Stipulated Agreements would amount to nearly a thousand dollars in airfare, hotel and rental car accommodations, irrespective of whether such a trip is the direct and proximate cause of her refusal to comply with this Court's Orders. Petitioner does not offer any argument or legal authority for her denial. As such, if Respondent is required to travel to Colorado and Petitioner's non-compliance with Orders is determined to have necessitated that trip, even if she has complied by the time of the hearing, Respondent will move for an award of costs in an amount not less than the total of travel costs and his imputed salary for as many days are required for his attendance, including travel time. If the merits of that claim are not reached by this Court, for any reason, Respondent will collaterally pursue the claim by incorporating it into the case he is presently prepar-

ing against Petitioner and her attorney in federal court under diversity jurisdiction, notwithstanding the domestic exception.

9. Respondent denies that the issue is moot due to the Petitioner's avoidance of process of service. Respondent has already filed a Motion for continuance and a Motion for an alias citation and the question of whether telephone testimony should be permitted and whether a reasonable accommodation under Title II of the Americans with Disabilities Act is required *vel non*, will need to be resolved prior to the hearing, whether now or four weeks from now.

10. Harrington has no knowledge of whether Ryan, "continues to incur attorney fees for required responses to the father's never-ending stream of unnecessary pleadings," and, therefore, denies the same. (Harrington also denies that his pleadings are unnecessary or inept, as alleged by attorney Wilson). If this is true, these expenses could have been easily avoided by Ryan by complying with the orders of this Court sometime within the past three years. Any consequences that she may now suffer are solely the direct and proximate result of her decision to defy the orders. Consequently, Respondent requests that Ryan & Wilson's unfounded request for attorney fees be stricken.

11. Respondent's denies any intention to draft inept pleadings, nor has he done so. The legal arguments and legal authorities advanced in his pleadings over the past 24 months demonstrates that he has performed exhaustive due diligence and has taken the process seriously enough to become educated on matters of law and procedure. Petitioner's alleged suspicions are unfounded and are supported by no examples, corroboration or credible evidence. Because these arguments are advanced in bad faith by attorney Wilson, Respondent request that they be **stricken** pursuant to Rule 11 and in accord with the Rules of Professional Conduct, § 3.1, requiring that Attorney Wilson not, "bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous."

12. Because attorney Wilson's arguments [regarding her alleged suspicions concerning Respondent's instant Motion] are without merit and, because she has failed to set forth any *prima facie* facts tending to prove her assertion, her request for attorney fees as per § 13-17-102(2) are submitted in bad faith, should be stricken and, also, cannot be levied on Respondent, as a *pro se* party who has submitted a meritorious request in good faith (*see, generally* C.R.S. § 13-17-102(6)). Further, Respondent challenges the reasonableness of attorney Wilson's fee affidavit. Wilson claims that she spent 1 ½ hours preparing this particular response, yet the responsive pleading is only 2 pages in length; advances no legal theories; is replete with conclusory and scurrilous allegations that could have been written by any layperson; and contains no legal authorities (that might have required peremptory research and preparation on her part).

13. A final matter of utmost importance is the matter of this court's jurisdiction. On or about the 16th 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 30th 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 motion, 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 16th 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.

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 25th 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

