

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN L. HARRINGTON	<hr/> ▲ COURT USE ONLY ▲ <hr/>
Sean L Harrington P.O. Box 351855 Westminster, Colorado 80035	Case No. 99 DR 3717
RULE 59 MOTION (RE: MARCH 22ND 2007 ORDER)	

COMES NOW the Respondent, to submit the within [Rule 59](#) Motion regarding the Court's [Order dated March 22, 2007](#) and, in support thereof, states as follows:

1. Father's [January 26th 2007 Special Appearance](#) (concerning an [August 16th 2004 Motion for Substitution of Judge, inter alia](#)) was assigned to the Chief Judge, according to the domestic clerks. Father requests that the Court take judicial notice of his special appearance, which is incorporated by reference herein. For the reasons more fully set forth in the Special Appearance, it is legally and ethically improper for the accused trial judge to rule on these matters.
2. The March 22nd Order contains no indicia of any review or analysis of the substance of father's original Motion for Substitution of Judge or of father's Special Appearance, father's [February 6th 2007 Rule 59/60 motion](#), or any of the supplements thereto, responses thereto or replies in support thereof.¹ The March 22nd, 2007 Order is devoid of any findings of fact or conclusions of law concerning any one of the several allegations contained in the recusal motion or of father's Special Appearance or of either of mother's two duplicative boiler-plate responses.
3. The trial Court's Order contains no findings of fact or conclusions of law to overcome the presumption of Section [13-17-102\(6\)](#), prohibiting an award of attorney fees upon a *pro se* litigant for his good faith filing of any application for relief grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. *See*

¹ The Order contains no findings regarding attorney Renne's [Jan. 22nd 2007 withdrawal](#) (which has not been ruled on), the mailing of the [Jan. 12th 2007 Order](#) to father's obsolete address while he was still represented by counsel and when the Court was in receipt and had used father's current mailing address (*see, e.g.*, ICON event # 435, [Nov. 6th 2006 notice](#) mailed to father's current address), the [pending federal law suit](#) naming Bill J. Fyfe and the trial judge. The Order also contains no analysis of any of the new evidence submitted regarding Fyfe or of the standards imposed by C.R.S. § [12-43-222\(1\)\(g\)](#), the [American Psychological Association Code of Conduct](#) or [Chief Justice Directive 04-08](#).

SaBell's, Inc. v. City of Golden, 832 P.2d 974 (Colo. App. 1991), *cert. denied*, 846 P.2d 189 (Colo. 1993) (A good faith presentation of a legal theory which is arguably meritorious is sufficient to avoid an award of attorney fees); *Artes-Roy v. Lyman*, 833 P.2d 62 (Colo. App. 1992) (*Pro se* litigants are entitled to protection of subsection (6) of this section unless trial court makes an express finding that such litigants knew or reasonably should have known that their claims lacked substantial justification). Moreover, the trial court has awarded attorney fees for two boiler-plate and duplicative responses that are disrespectful of the truth, which, therefore, is a public reward for attorney dishonesty. This is part of a pattern spanning many years of this particular trial judge using attorney fee awards to deter *pro se* parties from participating in the proceedings and from asserting claims or defenses. See [July 28th 2006 Motion and Affidavit of Bryan Spofford, M.D.](#), attached hereto and made part hereof by reference as, “**Exhibit A.**”

4. The trial Court’s reasoning that the two-and-one-half year delay was attributable to any pending appeal is both specious and legally erroneous. See, e.g., *Kittles v. Rocky Mountain Recovery, Inc.*, 1 P.3d 1220 (Wyo. 2000) (regarding a disqualification motion, the Wyoming Supreme Court explained, “The District Court did not rule on that motion, having erroneously concluded that it lacked subject matter jurisdiction over the appeal. On remand, we direct the district court to issue a ruling on the merits of [the] motion”). A trial court is divested only over those issues that are on appeal. *Molitor v. Anderson*, 795 P.2d 266 (Colo. 1990). The issue of recusal for the reasons stated in Respondent’s August 16th 2004 Motion was not on appeal at that time. Moreover, none of the pending appeals ([03CA1825 \(mandate issued May 3rd 2005\)](#), [04CA1161 \(mandate issued May 5th 2006\)](#) or [04CA1986 \(mandate issued October 3rd 2006\)](#)) prevented the trial court from issuing any one of several orders, including, but not limited to:

- ✓ [September 16th, 2004](#) (only two weeks after the trial Court issued the Order stating that it had been divested of jurisdiction)
- ✓ [January 31st 2005](#) (ordering contempt hearing (in violation of Rules 4 and 107) in favor of Bill J. Fyfe, a co-conspirator named in the August 2004 Motion for Substitution of Judge and pending federal lawsuit)
- ✓ [February 10th 2005](#) (decreeing that the Court will not rule on any motions because of the pending recusal motion)

5. However, both the appropriateness of the trial judge to issue *any* rulings in this case and the propriety of any of her orders issued during the time that the recusal motion remained pending for two-and-one-half-years (including the Order of January 12th 2007) *is* currently on appeal (in [07CA0379](#)) and, therefore, this Court is without jurisdiction to rule on the recusal motion or any other dispositive matters on appeal. See *Colo. State Bd. of Med. Exam'rs v. Lopez-Samayoa*, 887 P.2d 8, 15 (Colo. 1994) (When the substance of an appellant’s appeal challenges the authority that trial judge has over the case, any order issued during appellate pendency falls outside of the limited circumstances where the trial court retains jurisdiction). Because the trial court lacks jurisdiction to rule on these issues, the March 22nd 2007 Order is void *ab initio* and is a legal nullity.

WHEREFORE, father requests that this Court vacate all orders issued during the pendency of the undecided recusal motion and also the March 22nd 2007 Order.

Respectfully submitted on March 27, 2007.


Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of March 2007, I served a true and accurate copy of the foregoing Designation of Record by placing the same in the U.S. Mail, postage prepaid, and affixed hereto or by faxing to the following:

Jefferson County District Court

Attn: Chief Judge Jackson
100 Jefferson County Parkway
Golden, CO 80401

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

