

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	<p>▲ COURT USE ONLY ▲</p> <hr/> trial court case No. 99 DR 3717 Chief Judge R. Brooke Jackson's Div.
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
FATHER'S RULE 59 MOTION REGARDING JULY 27TH 2007 ORDER REGARDING JURISDICTION	

A hyperlinked version of this pleading is available at: <http://www.knowyourcourts.com/Harrington/99DR3717.htm>

I, Sean Harrington (“Respondent” in the above-captioned cause) respectfully submit the within Rule 59 Motion for Reconsideration of the July 27th 2007 Order entered by Division 3 of this Court. In support thereof, I state as follows:

I. Renewal of Prior Objection

1. I have previously objected to the exercise of jurisdiction by Division 3 of this Court.¹ I do not waive that objection by the filing of the within Motion. *See Aaberg v. District Court*, 136 Colo. 525, 319 P.2d 491 (1957); *see also WAIVER OR LOSS OF RIGHT TO DISQUALIFY JUDGE BY PARTICIPATION IN PROCEEDINGS*, 24 A.L.R.4th 870, §870+ (1983); *TIME FOR ASSERTING DISQUALIFICATION OF JUDGE, AND WAIVER OF DISQUALIFICATION*, 73 A.L.R.2d 1238, §14+ (1960).

2. I renew my objection because there is a [pending appeal](#) concerning Judge Tidball’s authority over this case and, because the Court of Appeals ruled in [Colo. State Bd. of Med. Exam'rs v. Lopez-Samayoa](#), that, when the substance of an appellant’s appeal challenges the trial judge’s authority over a case, any actions taken during appellate pendency falls outside of the limited circumstances where the trial court retains jurisdiction. 887 P.2d 8, 15 (Colo. 1994).

3. I also renew my objection on the basis on a conflict-of-interest regarding Judge Tidball, which has yet to be resolved on the merits.² Under the “Appearance Standard” articulated in

¹ I request that this Court take judicial notice of my [January 26 Special Appearance](#) and my [May 07 Special Appearances](#) in Objection to the Exercise of Jurisdiction by this Court.

² Opposing counsel, Madeline Wilson (a complaining witness in this case) requested of the state mental hospital that Judge Tidball be joined with Wilson and her client (Ryan, the petitioner in the above-styled cause) for the purposes of a “duty-to-warn.” Wilson fabricated a story that, *inter alia*, I threatened to kill

Johnson v. Dist. Court, 674 P.2d 952, 956 (Colo. 1984). A judge must be disqualified if she is interested or prejudiced in an action. C.R.C.P. 97; *see also* C.J.C. 3(C). Even if a trial judge is confident he or she is impartial, the judge's duty is to “eliminate every semblance of reasonable doubt or suspicion that a trial by a fair and impartial tribunal may be denied.” Beyond all reasonable doubt, the situations described in footnote 2, *supra*, present an unavoidable appearance that a trial by a fair and impartial tribunal is unlikely.

II. There are Pending Proceedings in Texas, which Predate the July 27th 2007 Order and Divest the Colorado Court of Jurisdiction over Custody Issues

4. Under § 14-12-206, this Court does not have jurisdiction because there are, in fact, pending proceedings in Texas. The Texas court has set a date of August 13, 2007 to review the renewed jurisdictional question. (See hearing date setting, attached hereto and marked as [Exhibit A](#)). Therefore, the Texas proceedings have not been terminated or stayed, as required under § 14-12-206 (1).

5. I respectfully request that this Court take Judicial Notice of the Annotated Texas Family Code (Tex..Fam.Code.Ann.), subsection 152.110, which provides that:

If proceedings involving the same parties are pending simultaneously in a court of this state [Texas] and a court of another state [Colorado], the court of this state shall inform the other court of the simultaneous proceedings. The court of this state shall request that the other court hold the proceeding in that court in abeyance until the court in this state conducts a hearing to determine whether the court has jurisdiction over the proceeding.

Colorado should not exercise jurisdiction until a hearing in Texas has been held. For this Court's convenience, I have attached the relevant section of the Texas Family Code as [Exhibit B](#).

[continued] Judge Tidball. Wilson, who wanted me locked up indefinitely, presented her factitious claims to the state's psychiatrist, Alan Levy, who was responsible for my involuntary commitment (which commitment was arranged by my ex spouse, Christy Ryan, through her direct-supervisor, Tom Olbrich, the clinical director of the Jefferson Center for Mental Health). The record reflects that Wilson engaged in *ex parte* communication with this Court regarding the duty-to-warn. In addition, I have recently alleged in a [federal lawsuit](#) that Judge Tidball conspired with Bill J. Fyfe to fix fees against me, in violation of a private contract. The Colorado Court of Appeals has upheld the validity of that contract in [04CA1161](#). I identified Judge Tidball in my federal lawsuit as a civil equivalent of an unindicted co-conspirator and I also named her division clerk, Laura Arcilise, as a defendant for denying me access to the court. The case was dismissed **without prejudice** and, accordingly, those claims have not been resolved.

6. Under § 14-12-201 (C.R.S.), this Court has lost jurisdiction because: **(a)** I have been a non-resident of Colorado since December 2000; **(b)** mother fled Colorado with my daughter in December of 2004; **(c)** neither party nor the minor child has significant contacts in Colorado;³ and **(d)** my daughter’s home state has been Texas for the last three years. The Official Comment to the Act provides that, “The jurisdiction of the home State has been prioritized over other jurisdictional bases.” See also McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983) (Because the home state of the child is that state in which the child is in physical residence, the home state is the preferred forum for modification of custody); and see *INTERSTATE FAMILY LAW JURISDICTION: SIMPLIFYING COMPLEX QUESTIONS*, 31 Colo.Law. 9, 77 (2002).⁴ Under subsection (1)(a), where mother and child have moved to another state after a dissolution of marriage proceeding in a court of Colorado, jurisdiction over issues of child custody is with the state that became the home state of the child at the commencement of the custody proceeding then pending before the court. McCarron, *supra*. See also In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975) (Where, on the date father filed his complaint in Colorado, all significant connections of child and mother were with Kansas and child's contacts with Colorado were minimal, Kansas had jurisdiction to make a custody determination); In re Brown, 203 S.W.3d 888 (Tex. App. 2006) (“The family code defines 'home state' as 'the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. The date of the commencement of the child custody proceeding is used as the point of reference from which to determine the child's home state. 'Commencement' is defined as 'the filing of the first pleading in a proceeding'”) (citing In re Oates, 104 S.W.3d 571, 578 (Tex. App. 2003); Tex. Fam. Code Ann. at 152.102(5)). In determining home-state jurisdiction, the Texas Supreme Court has adopted a “physical presence” test that focuses exclusively on the child’s physical location for the six month period preceding the filing of a petition requiring an initial child-custody determination. Powell v. Stover, 165 S.W.3d 322, 327-28 (Tex. 2005).

7. Under § 14-12-202, this Court does not have continuing and exclusive jurisdiction, because the court of another state (Texas) has determined, pursuant to § 14-12-202 (1)(a)

³ "Madeline Wilson, mother's co-defendant in federal case 05-cv-01858, argued in that case, “Plaintiff is a nonresident of the State of Colorado.” A copy of her pleading was attached as Attachment D to my recent [AMENDED/SUPPLEMENTED SPECIAL APPEARANCE \(OBJECTING TO EXERCISE OF JURISDICTION\)](#). Also, in my [Second Amended Complaint](#), served on both Ryan and Wilson on December 21, 2005, I stated, “Father is not now and has not been a legal resident of Colorado at any time since January of 2001.” Mother registered Shelby in Wise County Independent School District in January 2005; she registered her 2004 Saturn automobile in Texas on March 8th 2005; she was issued a “Compact” nursing license, upon her application, by the Texas Board of Nurse Examiners on January 31st 2005. Mother has been employed in the Post Anesthesia Care Unit (PACU) of Wise Regional Health Systems Hospital.

⁴ I supplied a copy of Judge Arkin’s treatise as Attachment D to my [July 12th Special Appearance](#) and as Attachment F to my latter [Amended/Supplemented Special Appearance](#).

that the child, the child's parents, and any person acting as a parent do not presently reside in Colorado. Judge's Fostel's [May 2nd 2007 bench ruling](#) at 3.⁵ The Official Comment to subsection 2 explains that, "Continuing jurisdiction is lost when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State." See Barden v. Blau, 712 P.2d 481 (Colo. 1986) (While the intent of the uniform act is that the original state shall have continuing jurisdiction under § 14-13-115, such jurisdiction may be lost by the erosion of a child's and parents' significant connections with the state).

III. Exercising Jurisdiction over parties, who have not lived in Colorado in years is illogical and contrary to notions of judicial economy, equity and the purpose of the UCCJEA.

8. The primary purpose of the UCCJEA is to avoid jurisdictional conflicts with other states over child custody issues, to discourage parents from "jurisdictional fishing," and to ensure that the state making the custody decision is the state with the **closest connection** to the child and the child's family. L.G. v. People in Interest of K.G., 890 P.2d 647 (Colo. 1995); Nistico v. District Ct., 791 P.2d 1128 (Colo. 1990); G.B. v. Arapahoe County Ct., 890 P.2d 1153 (Colo. 1995).

9. To an unfamiliar observer, mother's motive in desiring these proceedings to persist in Colorado (801 miles away) defies reason, when the Texas court is located less than **one mile** from her residence. However, to anyone with knowledge of this case, it is no mystery:

a. This latest stream of frivolous litigation is procedural posturing to cause delay, perpetuating the parentecotomy that has been perpetrated on Shelby and me; and

b. Judge Tidball stated on July 2nd 2003:

I would like to have Shelby go back and spend another couple weeks with her father, which, quite frankly, would have been a better parenting plan to begin with. I think nine weeks uninterrupted, when Shelby doesn't see her father on a regular basis during the year, is not a good parenting plan, however, it happens to be the one that was agreed to by the parties here. It's not something I ever would have ordered absent the agreement of the parties.

⁵ The May 2nd 2007 transcript is attached hereto and made part hereof by reference as, "[Exhibit C](#),"

[July 2nd 2003 transcript](#) at 118.⁶ Of course, the reason “Shelby doesn’t see her father on a regular basis during the year” (or, rather, at all), is because of this parental alienation scheme. When I raised this issue on July 2nd 2003, Judge Tidball retorted:

[Y]ou testified a lot today about how you believe the petitioner is trying to undermine your parenting time and trying to micromanage it and control it, and I'm not going to make a judgment on that one way or the other . . . regardless, you have an obligation to provide certain basic information that will give [mother] enough information to feel comfortable with the circumstances in which Shelby is residing.

Id. at 119. Yet, as evidenced by the handling of my Special Appearance by this Court, the same judge, who was disinterested in hearing my claims of parental alienation and, who pontificated about my “obligation” to submit my daily activities with Shelby for mother’s approval (while Shelby was with me for the summer in Massachusetts or Minnesota), is characteristically unconcerned that mother has concealed my daughter from me for **the last four (4) years**, withholding any and all information that might make *me* “comfortable with the circumstances in which Shelby is residing.”

Naturally, Ryan and Wilson would rather forum shop and retain a sympathetic, biased, anti-father judge, who supports a limited or non-existent relationship between myself and Shelby—even if that judge is 801 miles away in a state where have neither party has resided in years—rather than comply with the UCCJEA and risk having their parental alienation campaign exposed, resulting in my reunification with Shelby.

IV. The *ex parte* communication between courts that resulted in the July 27th 2007 Order was in violation of C.R.S. § 14-13-110 and the UCCJEA and deprived me of procedural due process.

10. The July 27th Order results from an *ex parte* conversation that allegedly took place between Judge Tidball and the Texas Judge on an unspecified date, in which the Texas court allegedly declined jurisdiction (as evidenced by an **unsigned** letter sent only to mother’s Texas attorney).⁷ A copy of Judge Fostel’s letter is attached hereto and made part hereof by reference as “[Exhibit E](#).”

⁶ The page containing this excerpt is attached hereto and made part hereof by reference as, “[Exhibit D](#).”

⁷ Although, the “letter” appears to have been faxed to my attorney in Texas, an incorrect fax number was used. Also, it is uncertain who mother’s attorney actually is. Marilyn Belew is the counsel-of-record and

11. Whatever conversation occurred between Judge Tidball and the Texas court was in violation of Section 14-13-110 (C.R.S. 2000) (adopting the [Uniform Child Custody Jurisdiction and Enforcement Act](#) (UCCJEA)):

a. § 14-13-110 (2) provides that “The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they **must** be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.” [emphasis added]. To the best of my knowledge, I was not afforded an opportunity to participate or to present information. Rather, the conference occurred in response to one of Madeline Wilson’s usual “emergency forthwith” motions (which really means, “Give my client what she’s asking for, without affording father any opportunity to respond”). The Official Comment to Section 14-13-110 provides that, “The second sentence of subsection (2) protects the parties against **unauthorized *ex parte* communications**” [emphasis supplied], such as the kind that has occurred here.

b. § 14-13-110 (4)~(5) provides in pertinent part that:

a record **must** be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Id. [emphasis added]. To the best of my knowledge, no record was made of this communication. At a July 31, 2007 appearance in Texas, Judge Fostel repeatedly told my attorney (on the record), “There is no record!” I recently spoke with Mary, the law clerk for Chief Judge Jackson; she explained, “If there was an informal conversation between two judges of different courts, I doubt that a record would have been made.”

Indeed, putting an unauthorized *ex parte* communication on the record would defeat the purpose of having an unauthorized *ex parte* conversation.

12. If the Texas court has reversed itself,⁸ it did so as the result of unauthorized *ex parte* communication[s], about which there is no record. Therefore, this is not harmless error.

[continued] the Texas court has not granted any motion to withdraw or substitute counsel. Dana Manoushagian, another Texas attorney, who has attended recent hearings in mother’s stead, has an attorney-client relationship with the undersigned. Ms. Manoushagian has contacted the undersigned’s Texas attorney, Thomas J. O’Brien, and acknowledged the conflict.

⁸ The Texas court had already assumed jurisdiction, as I previously stated in my previous filings with this Court. In the May 2nd 2007 transcript (“[Exhibit C](#)”), Judge Fostel of the 271st Judicial District Court in Texas ruled that the Texas court had jurisdiction over this cause.

13. The logical explanation for why Judge Tidball would have contacted the Texas court to retain jurisdiction over parties, who have not lived in Colorado in many years (thus, in contravention of the UCCJEA), is to retaliate against me for my lawsuit identifying Judge Tidball and suing her co-conspirator Bill J. Fyfe and for suing her division clerk, Laura Arcilise, with whom she is very close. This retaliation will take the form of depriving me of a cause of action against Ryan and Wilson and to codify and perpetuate the parentectomy.

V. The July 27th 2007 Order does not address Madeline Wilson's and Christy Ryan's Fraud-on-the-Court and provides not findings of fact or conclusions of law regarding the same.

14. In both of my recent Special Appearances ([one dated July 12th](#); a latter [amended/supplemented Special Appearance](#) filed some time shortly thereafter), I pointed out that mother and her attorney made allegations of fact that they knew or reasonably should have known were substantially false. Citing [People v. Schupper](#), 140 P.3d 293, 296 (Colo. App. 2006)), I asked this Court to defer this matter to the District Attorney under § 18-8-502(1) (First Degree Perjury) and § 18-8-306, C.R.S. 2005 (attempt to influence a public servant). The Court did not address these allegations, evaluate the offers-of-proof attached to my pleading, or apply any law to the alleged facts.

15. In both of my recent Special Appearances, I respectfully requested that this Court refer this matter to the Office of Attorney Regulation Counsel, because mother's attorney, who is a complaining witness in the above-captioned cause, has violated the Rule of Candor toward the Tribunal, has engaged in dilatory tactics to obstruct the orderly administration of justice, and has misrepresented the law (e.g., arguing the best interests standard of the UCCJA of 1967, which language was expressly repealed by the UCCJEA of 1997, adopted in Colorado in 2000). The [ABA Standards for Imposing Lawyer Sanctions](#) provides, in pertinent part:

It cannot be emphasized strongly enough that lawyers and judges must report unethical conduct to the appropriate disciplinary agency. Failure to render such reports is a disservice to the public and the legal profession. Judges, in particular, should be reminded of their obligation to report unethical conduct to the disciplinary agencies. Under Canon 3(D)(1) and (2) of the ABA Model Code of Judicial Conduct, a judge who receives information indicating a substantial likelihood that that [sic] another judge or a lawyer has violated the applicable rules of professional conduct is obligated to take appropriate action. This action includes making a report of the violation to the appropriate authority when the violation raises a substantial question about the judge's fitness or the lawyer's honesty, trustworthiness or fitness. Frequently, judges take the position that there is no such need and that errant behavior of lawyers can be remedied solely by use of contempt proceedings and other alternative means. It must be emphasized that the goals of lawyer discipline are not properly and fully served if the judge who observes unethical conduct simply deals with it on an ad hoc basis. It may be proper and wise for a judge to use contempt powers in order to assure that the court

There is no indication from the July 27th 2007 Order that this Court evaluated Ms. Wilson's conduct, my allegations and the applicable law to the my allegations and to her conduct. Colorado trial courts are required to provide factual findings, which explain the basis for its ruling. People ex rel. J.L., 121 P.3d 315, 318 (Colo.App. 2005).

WHEREFORE, for the foregoing reasons and based upon the foregoing authorities, I request that this Court vacate its July 27th 2007 Order; that this Court assign any further ascertainment of jurisdiction or other matters to another judge; that the other judge issue a declaratory judgment pursuant to § 14-12-202 regarding the residency of the parties and the minor child for the purposes of clarifying jurisdiction; and that the other judge refer this matter to the district attorney and to the Attorney Regulation Counsel relative to the fraud-on-the-court perpetrated by mother and her attorney in their recent [Emergency Motion \(regarding jurisdiction\)](#).

Respectfully submitted, August 1st 2007.



Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of August, 2007, I served a true and accurate copy of the foregoing *RULE 59 MOTION* by placing the same in the U.S. Mail, postage prepaid, and affixed hereto to the following:

Jefferson County District Court
Attn: Chief Judge R. Brooke Jackson
100 Jefferson County Parkway
Golden, CO 80401

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


