

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> trial court case No. 99 DR 3717 Div. 9 / Hon. Jack Berryhill
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
OBJECTION TO ENTRY OF APPEARANCE BY COUNSEL ON BEHALF OF THE COURT'S APPOINTED CHILD AND FAMILY INVESTIGATOR	

COMES NOW, Respondent Sean L. Harrington (“father”), and respectfully submits the within objection to an Entry of Appearance by counsel on behalf of the child and family investigator, Bill J. Ffye.

1. This matter is before the court on the issues recently presented to the Court of Appeals and that Court’s August 20, 2008 Mandate. Father is requesting the Court to exercise its authority to discipline the child and family investigator for alleged unethical conduct and remove him from rolls of approved child and family investigators utilized by this Court.

2. Father is concerned about the Entry of Appearance made on behalf of the Child and Family Investigator because, as more fully set forth below, it transforms the post-dissolution proceedings into a adversarial civil proceeding, which not only sets an unwelcome precedent, but also which does not afford father the panoply of remedies that would otherwise be available in a traditional adversarial civil proceeding, including the right to a jury trial and the right to seek damages.

3. At the present time, there are only three parties to this case: (1) the Petitioner; (2) the Respondent; and (3) the Jefferson County Delegate Child Support Enforcement Unit (CSEU, a/k/a “Special Intervener,” pursuant to C.R.S. § 14-10-107.5).

4. A party may not be joined or intervene in a domestic relations action, except by authority of statute or court rule (*e.g.*, C.R.S. § 14-13-205). *See generally* C.R.C.P. 24. Rule 24 requires that a Motion to Intervene shall be filed and that it shall be accompanied by a pleading. *Capitol Indus. Bank v. Strain*, 442 P.2d 187, 188 (1968). “Parties litigant have a right to rely upon the rules as written. It is the duty of trial courts, as well as our duty, to enforce them when timely objection is made by a party to litigation.” *Id.* Mr. Fyfe has not filed a Motion to Intervene setting forth the claim or defense for which intervention is sought.

5. Although this Court has supervisory authority over its appointed CFI, who is an adjunct of the Court,¹ the CFI is not a *party* to this case. *See, e.g.*, C.R.S. § 14-10-116.5(3) (concerning the allocation of fees, the statute refers to “parties” to the absolute exclusion of the CFI).

6. Although Fyfe has filed no Motion to Intervene, he has directed an attorney to file an Entry of Appearance on his behalf on October 1, 2008.

7. Whether Fyfe is entitled to counsel turns on the nature of the rights that are stake. To illustrate this point, the Court of Appeals rejected the People’s argument in

¹ *See* Chief Justice Directive 04-08 (Sept. 2004) (“A special advocate should be aware of his or her position as an investigative arm of the court.”); *Yonker by and through Helstrom v. Thompson*, 939 P.2d 530, 533 (Colo. App. 1997) (“[A] guardian *ad litem* is an agent of the court ‘through whom it acts to protect the interests of the minor’”) (quoting *Miller v. Clark*, 144 Colo. 431, 433, 356 P.2d 965, 966 (1960)).

People ex rel J.B. that a child's right to counsel in a D&N case was inapplicable because the review hearings held were “non-adversarial.” 702 P.2d 753, 754 (Colo. App. 1985). This argument was rejected because the proceedings in dependency or neglect affect important rights so there must be substantial compliance with statutory requirements of those proceedings. *Id.* The statutorily prescribed periodic judicial review of an out-of-home placement proceeding was an important proceeding to the parties because the trial court considers the propriety of continued deprivation of custody, often together with the parties' performance under the provisions of the court approved treatment plan. *Id.*

8. Here, by contrast, the court’s administrative/inquisitorial review of Fyfe’s conduct is not a strict statutory proceeding and does not implicate substantial rights. Unlike attorney disciplinary proceedings—which, like the inquiry in this case, are also *sui generis*²— a CFI does not have a liberty or property interest in appointments to serve at the pleasure of the Court under Section 14-10-116.5.

9. Moreover, because he is an arm of the Court, it would be improper to cast Mr. Fyfe as an *opposing party*. To do so would not only distort the nature of domestic relations proceedings³—setting a imprudent precedent— but would also transmogrify a non-adversarial proceeding into an adversarial one, pitting one party against a Court adjunct.

² See *Smith v. Mullarkey*, 121 P.3d 890, 892 (Colo. 2005 (*en banc*)) (“Bar proceedings, including those relating to admission, discipline, and disbarment, because such proceedings are neither criminal nor civil, but rather *sui generis*”).

³ See *In re Marriage of Bozarth*, 779 P.2d 1346, 1353 (Colo.1989) (a child custody hearing is not an adversarial proceeding pitting the father against the mother, but rather, it is a hearing to determine what placement of the child will be in the child's best interests); *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973) (A hearing on custody is not a typical adversary civil proceeding, but rather, is a hearing in which the court's responsibility is to determine a placement that will be in the child's best interests).

10. The claims father has against Mr. Fyfe call for the court to review his conduct, which is a function that is administrative and inquisitorial in nature.⁴ Thus, permitting Fyfe to intervene as a party and a right to counsel is tantamount to a court employee employing counsel, who makes an entry of appearance concerning an administrative complaint filed against the clerk by a litigant in some extant case.

11. Although joinder of tort and contract claims with dissolution cases is ordinarily disallowed in Colorado,⁵ if this Court is inclined to permit Fyfe to intervene under Rule 24, transforming non-adversarial post-dissolution proceeding into a adversarial proceeding, father requests declaratory judgment that he is entitled to:

- add formal contract and tort claims;
- seek actual, nominal and punitive damages on all claims; and
- a jury determination on all causes of action against Fyfe

WHEREFORE, based on the foregoing reasons and the foregoing authorities, father objects to the intervention of the CFI as a party to this case or, alternatively, father requests declaratory judgment that he is entitled to request damages on his claims and try those claims in a traditional adversarial forum.

Dated this 3rd day of October, 2008


Sean L. Harrington

⁴ United States Judicial Conference Committee on Judicial Conduct and Disability, January 14, 2008 Memorandum of Decision (“Fundamentally, however, misconduct proceedings are inquisitorial and administrative”); *Cf. Young v. Colorado Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961) (An inquiry into the mental capacity of a person is a statutory proceeding of a non-adversary nature).

⁵ *Wilson v. Prentiss*, 140 P.3d 288, 291 (Colo.App., 2006); *Mockelmann v. Mockelmann*, 121 P.3d 337 (Colo. App. 2005); *Simmons v. Simmons*, 773 P.2d 602, 604 - 05 (Colo. App. 1988)

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of October, 2008, I served a true and accurate copy of the foregoing *OBJECTION TO ENTRY OF APPEARANCE* by placing the same in the U.S. Mail, postage prepaid, and affixed hereto to the following:

First Judicial District Court
Division 9
100 Jefferson County Parkway
Golden, CO 80401

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

and by electronic mail to: David H. Yun (DYun@jalegal.com)

