

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	▲ COURT USE ONLY ▲ <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 PETITIONER'S ATTORNEY-OF-RECORD, MADELINE WILSON	

COMES NOW, Respondent Sean L. Harrington (“father”), and respectfully submits the within objection to an Entry of Appearance by counsel on behalf of Petitioner’s attorney of record, Madeline Wilson.

1. This matter is before the court on the Entry of Appearance and Request for Extension of Time filed on behalf of non-party counsel-of-record, Madeline Wilson.

2. On October 15, 2008, Petitioner’s attorney-of-record, Madeline Wilson, retained counsel, who filed an Entry of Appearance on her behalf. Mr. Huff did not comply with Rule 121 of the Rules of Civil Procedure, section 1-15(8), which requires moving counsel (1) to confer in good faith with opposing counsel before filing a motion, (2) to certify at the beginning of the motion that he or she has done so, and (3) to advise the court if the relief sought has been agreed to or is not opposed, and (4) to provide a reason if no conference has occurred.

3. As noted above, Ms. Wilson is Petitioner’s attorney of record. *See People v. MacRander*, 828 P.2d 234, 240 (Colo., 1992) (*en banc*) (defining ‘attorney of record’ as an attorney who has filed a notice of appearance and “hence is formally mentioned in

court records as the official attorney of a party”) (citing BLACK'S Law Dictionary 129 (6th ed. 1990)).

4. An “attorney desiring to enter appearance, other than attorney initially appearing **on behalf of a party** in first instance, must file written entry of appearance or obtain court order recognizing attorney's appearance” 828 P.2d at 240. [emphasis added]. By this definition, there can be no doubt that Mr. Huff regards Ms. Wilson as a party to this case.

5. 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.*

6. 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). Ms. Wilson has not filed a Motion to Intervene and to be added as a party, setting forth the claim or defense for which intervention is sought.

7. Mr. Huff’s assertion that Ms. Wilson is now an interested party to her client’s dissolution proceeding presents unique problems, discussed below.

8. Of all people who should understand that an attorney of record is not a party to her client's case, it should be Mr. Huff, as it was he who drafted a November 30, 2005 brief on behalf of Ms. Wilson in *Harrington v. Wilson* (D.Colo., No. 05-cv-01858), in which he argued:

A retained outside attorney is an independent contractor of a client. *Williams v. Burns*, 463 F. Supp. 1278, 1284-5 (D. Colo. 1979). A lawyer, like other agents, is not liable for acts of a client that make the client liable. Restatement (Third), The Law Governing Lawyers, § 56, Comment c. An agent guarantees neither the honesty nor the solvency of the principal. Restatement (Second), The Law of Agency, § 328, Comment a.

Therefore, by seeking to add Ms. Wilson as a party to this dissolution proceeding, Mr. Huff appears to be conceding that Ms. Wilson has liability for actions in this matter, independent of her client or in collusion with her client.¹

9. Ms. Wilson's role as a party or fact witness to this case is a violation of the Rule of Professional Conduct 3.7 (lawyer as witness). The comment [1] to Rule 3.7 explains that, "Combining the roles of advocate and witness can prejudice the tribunal and the opposing party." Comment [2] provides that, "The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation." This is because, "A witness is required

¹ See, Restatement (Third) of the Law Governing Lawyers, §§57(1) and (2) (traditionally, lawyers have enjoyed a certain degree of immunity to suits brought by third parties for their conduct during litigation); Duty of Attorney - Adverse Parties, 3 Modern Tort Law: Liability and Litigation (2d ed.), § 26:11; Eugene Schiltz. 2008. "Civil Liability for Aiding and Abetting: Should Lawyers be 'Privileged' to Assist their Clients' Wrongdoing?" ExpressO Available at: http://works.bepress.com/eugene_schiltz/1.

to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.” *Id.*

10. Ms. Wilson’s role as a party to this case violates the Colorado Rules of Professional Conduct 1.8(j), which forbids a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client. Generally, this Rule is applied to a property interest. However, it has been extended to “forbid[ing] an attorney from acquiring *any right* which is genuinely disputed and likely to become the subject of litigation . . . **otherwise, there would be too much potential for abuse by the attorney who has substantial control over the filing or the answering of the suit.**” *People v. Mason*, 938 P.2d 133, 136 (Colo., 1997) (*en banc*) [emphasis added].

11. For the same reason, Wilson’s role as a party to this case violates RPC 1.7. Comment 10 to the Rule provides that, “The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.” The Colorado Supreme Court has explained that “A number of attorney ethical proscriptions, especially those barring representation of conflicting interests, *see, e.g.*, Colo. RPC 1.7—1.11, or acting in conflicting roles, *see, e.g.*, Colo. RPC 3.7 (Lawyer as Witness), have developed precisely to ensure fairness and loyalty to the parties and protect the integrity of the process.” *In re Estate of Myers*, 130 P.3d 1023, 1025 (Colo., 2006) (*en banc*).

WHEREFORE, based on the foregoing reasons and the foregoing authorities, father objects to the intervention of Madeline Wilson as a party to this case and seeks an Order preventing her from converting this marital dissolution into a collateral action.

Dated this 16th day of October, 2008



Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 16th 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)

and by electronic mail to: Brett N. Huff (bhuff@huffandleslie.com)


