

DISTRICT COURT, JEFFERSON COUNTY,  
COLORADO  
100 Jefferson County Parkway  
Golden, CO 80401

**In re the Marriage of:**

**CHRISTY HARRINGTON, a/k/a CHRISTY RYAN,  
n/k/a CHRISTY RYAN,**

Petitioner,

and

**SEAN HARRINGTON,**

Respondent.

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**▲ COURT USE ONLY ▲**

Case Number: 99-DR-3717

Div. 9 Ctrm: 5F

**SPECIAL ADVOCATE WILLIAM J. FYFE, ED.D'S RESPONSE TO RESPONDENT  
SEAN HARRINGTON'S MOTION FOR LEAVE TO UNDERTAKE FORMAL  
DISCOVERY**

Special Advocate William J. Fyfe Ed.D, through his attorneys, Jaudon & Avery LLP, respectfully submits his response to Respondent Sean Harrington's Motion for Leave to Undertake Formal Discovery, and in support states as follows:

1. Respondent's Motion for Leave to Undertake Formal Discovery seeks permission

from the Court to serve non-pattern interrogatories, requests for admissions, and requests for production of documents and things. Respondent, by his own admission, “seeks leave to undertake formal discovery **in preparation for trial.**” *Motion for Leave to Undertake Formal Discovery at 1* ¶2 (*emphasis added*). He also seeks to expand the scope of the proceedings “to further ascertain the nature and scope of the relationships, agreements and transactions between and concerning the CFI and the court and opposing party.” *Id. at 2* ¶4. The discovery requested by Respondent is contrary to the remand from the Court of Appeals, unprecedented, unsupported by legal authority, and should not be granted.

2. As Dr. Fyfe has previously argued, the Court of Appeals specifically remanded this case for further proceedings to (1) “reconsider father’s motion to disqualify under C.R.C.P. 60(b)(5);” and (2) to determine whether special advocate fees have been “allocated equally between the parties.” *In re Marriage of Harrington*, No. 07CA0379 at 7-8. Those are the only issues before this Court. Consistent with the mandate of the Court of Appeals, this Court ordered Respondent to set a hearing to consider Respondent’s “May 18, 2004, June 9, 2004, and July 30, 2004, motions for reconsideration and to disqualify the Special Advocate, including allocation of the Special Advocate Fees.” *Order dated 9/17/08*.

3. The Court of Appeals ruling constitutes the law of the case, and this Court must follow it on remand. *People v. Roybal*, 672 P.2d 1003, 1005 (Colo. 1983). “When an appellate court remands a case with specific directions to enter a particular judgment or to pursue a prescribed course, a trial court has no discretion except to comply with such directions.” *Musgrave v. Industrial Claim Appeals Office*, 762 P.2d 686, 688 (Colo. App. 1988).

4. Here, the Court of Appeals did not remand this matter for a trial as Respondent

contends, nor did its ruling indicate that Respondent should be allowed to conduct additional discovery. Rather, it was remanded for further proceedings on two specific matters. As the Court of Appeals specifically noted, the remainder of the case has actually been transferred to Texas under the Uniform Child Custody Jurisdiction Enforcement Act, C.R.S. §§ 14-13-101, et seq. *In re Marriage of Harrington*, No. 07CA0379 at 4. This Court has ordered Respondent to set a hearing, not a trial, and its order does not indicate that further formal discovery is proper. Given that these proceedings are limited to two issues, there is no basis for Respondent's discovery request.

5. Respondent is correct that C.R.C.P. 16.2(f)(4) permits a court to order additional formal discovery upon good cause shown. However, that rule does not pertain to proceedings where, as here, virtually all outstanding issues have been transferred to a different jurisdiction and are subject to the laws of that jurisdiction. *See* C.R.C.P. 16.2(a) (noting that Rule 16.2 governs case management in "actions under Articles 10, 11, and 13 of Title 14 of the Colorado Revised Statutes."); *see also* C.R.S. § 14-13-206(1) ("a court of this state may not exercise its jurisdiction under this part 2 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article"). Accordingly, C.R.C.P. 16.2(f)(4) does not authorize additional formal discovery in this case.

6. Moreover, even assuming C.R.C.P. 16.2(f)(4) applies to this proceeding, Respondent has not demonstrated "good cause" under C.R.C.P. 26(b)(2)(F) sufficient to permit additional formal discovery. A party may only seek discovery of "matter relevant to the subject matter involved in the action." C.R.C.P. 26(2)(b)(1). Among the factors a court may consider in determining whether good cause exists are (1) "Whether the burden or expense of the proposed

discovery outweighs its likely benefit, taking into account ... the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues;” and (2) “Whether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.” C.R.C.P. 26(b)(2)(F)(iii) & (iv).

7. Here, Respondent seeks to serve “non-pattern interrogatories to further ascertain the nature and scope of relationships, agreements and transactions between and concerning the CFI and the court and opposing party.” *Motion for Leave to Undertake Formal Discovery at 2 ¶4.*

Respondent’s May 18, 2004, June 9, 2004, and July 30, 2004 motions do not contain any allegations related to the relationships, agreements, or transactions among the Special Advocate, the court and the Petitioner and, as a result, these issues are not before the Court on remand. Respondent also seeks to serve requests for admissions and requests for production, but does not identify the subject matter he seeks to discover with those requests. *Id.* Given Respondent’s failure to demonstrate that his requested discovery is even remotely related to his May 18, 2004, June 9, 2004, and July 30, 2004 motions or the allocation of the Special Advocate’s fees, the requested discovery is not relevant and should not be allowed. Additionally, since the requested discovery has no relevance to the issues before the court, Respondent has also failed to demonstrate good cause both because the burden of the discovery outweighs its benefit and because it is not reasonable. C.R.C.P. 26(b)(2)(F)(iii) & (iv). Therefore, the Court should deny Respondent’s request.

WHEREFORE Dr. Fyfe respectfully requests that the Court deny Respondent’s Motion for Leave to Undertake Formal Discovery. A proposed order is submitted along with this Response.

Dated this 24<sup>th</sup> day of October, 2008.

JAUDON & AVERY LLP



By: /s/ David H. Yun

*In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.*

CERTIFICATE OF DELIVERY

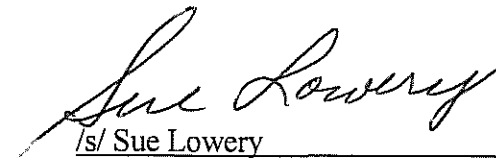
I hereby certify that a true and correct copy of the foregoing **SPECIAL ADVOCATE WILLIAM J. FYFE, ED.D'S RESPONSE TO RESPONDENT SEAN HARRINGTON'S MOTION FOR LEAVE TO UNDERTAKE FORMAL DISCOVERY** was electronically filed and served via E-Filing with LexisNexis File and Serve on October 24, 2008, to:

Brett N. Huff  
Huff & Leslie, LLP  
2480 Gray Street  
Denver, Colorado 80214

Sean Harrington  
P.O. Box 351855  
Westminster, CO 80035

A correct copy of the foregoing was also e-mailed to the Respondent, per his request, at the following e-mail address:

esoxlucios@msn.com



/s/ Sue Lowery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case Number: 99-DR-3717  Div. 9 Ctrm: 5F
<p><b>In re the Marriage of:</b></p> <p><b>CHRISTY HARRINGTON, a/k/a CHRISTY RYAN,</b>  <b>n/k/a CHRISTY RYAN,</b></p> <p style="padding-left: 40px;">Petitioner,</p> <p>and</p> <p><b>SEAN HARRINGTON,</b></p> <p style="padding-left: 40px;">Respondent.</p>	
<p><b>ORDER DENYING RESPONDENT'S MOTION FOR LEAVE TO UNDERTAKE          FORMAL DISCOVERY</b></p>	

THIS MATTER having come before the Court on Respondent's Motion for Leave to Undertake Formal Discovery and the Special Advocate's Response thereto, and the Court being fully advised in the premises,

DOTH ORDER, ADJUDGE AND DECREE that Respondent's Motion is DENIED. The Court of Appeals' opinion remanding this case directed this court to consider two issues: (1) Respondent's motion to disqualify the Special Advocate; and (2) whether the Special Advocate's fees had been equally apportioned. The Court of Appeals did not remand this case for a trial, nor did it indicate that Respondent was to be allowed to conduct discovery. Because this case (with the exception of the two issues remanded by the Court of Appeals) has been transferred to Texas, the Court finds it would be inappropriate to permit Respondent to broaden the scope of the proceedings by conducting formal discovery on matters not related to the remand.

The Court also finds that Respondent has not demonstrated that his requested discovery is relevant or that good cause exists to conduct additional formal discovery. Specifically, Respondent seeks to inquire into the relationship, agreements and contracts between the Special Advocate, the Court, and the Petitioner. These matters were not raised in Respondent's May 18, 2004, June 9, 2004, and July 30, 2004, motions for reconsideration and to disqualify the Special Advocate, nor are they among the issues remanded for this Court's consideration. Further, Respondent has failed to demonstrate that the relationship, agreements, or contracts between the Special Advocate, the Court

and the Petitioner are related in any way to the issues before the Court, namely whether the Special Advocate's conduct was allegedly unethical and justifies the imposition of sanctions. In addition, Respondent's Motion does not even identify what subjects he seeks to conduct discovery on with his requests for admissions and requests for production. As a result, the Court finds that Respondent's requested discovery is not relevant to the issues before the Court. The Court also finds that Respondent has failed to demonstrate good cause because the burden of the requested discovery outweighs its negligible value to these proceedings and because, given the scope of the proceedings, the requested discovery is not reasonable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

BY THE COURT:

\_\_\_\_\_  
District Court Judge

### LexisNexis File & Serve Transaction Receipt

**Transaction ID:** 22112588  
**Submitted by:** Susan Lowery, Jaudon & Avery LLP  
**Authorized by:** David H Yun, Jaudon & Avery LLP  
**Authorize and file on:** Oct 24 2008 9:42AM MDT

**Court:** CO Jefferson County District Court 1st JD  
**Division/Courtroom:** 9 - Division 9  
**Case Class:** Domestic Relations  
**Case Type:** Dissolution of Marriage  
**Case Number:** 1999DR3717  
**Case Name:** HARRINGTON, CHRISTY and HARRINGTON, SEAN LEE

**Transaction Option:** File and Serve  
**Billing Reference:** 0133-0006

**Documents List**

2 Document(s)

**Attached Document, 5 Pages Document ID: 17824340**

[PDF Format](#) | [Original Format](#)

**Document Type:** Response **Access:** Public **Statutory Fee:** \$0.00 **Linked:**

**Document title:** Special Advocate William J Fyfe EdDs Response to Respondent Sean Harringtons Motion for Leave to Undertake Formal Discovery

**Attached Document, 2 Pages Document ID: 17824366**

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Related Document ID: 17824340  
**Document Type:** Proposed Order **Access:** Public **Statutory Fee:** \$0.00 **Linked:**

**Document title:** Proposed Order Denying Respondents Motion for Leave to Undertake Formal Discovery

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**Sending Parties (1)**

Party	Party Type	Attorney	Firm	Attorney Type
FYFE, WILLIAM J	Other	Yun, David H	Jaudon & Avery LLP	Privately Retained Attorney

**Recipients (3)**

Service List (3)

Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
Service	HARRINGTON, CHRISTY	Petitioner	Wilson, Madeline	Wilson, Madeline	Privately Retained Attorney	E-Service
Service	HARRINGTON, CHRISTY	Petitioner	Huff, Brett	Huff & Leslie LLP	Privately Retained Attorney	E-Service
Service	HARRINGTON, SEAN LEE	Respondent	Pro Se	Pro Se-	Pro Se	U.S. Mail

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