

to retain counsel of her own, and increase the costs of this matter. Harrington filed the following: (1) Motion for Declaratory Judgment and for Case Management Order; (2) Motion for Leave to Undertake Formal Discovery; (3) Father's Supplement to Motion for Declaratory Judgment and Protective Order; (4) Father's Reply in Support of Motion for Declaratory Judgment and Protective Order and Motion for Sanctions Against Attorney CFI Madeline Wilson; and (5) Amended Motion for Punitive Contempt In Re Madeline Wilson.

On February 24, 2009, the Court entered its Order After Remand. In that Order, the Court recognized Harrington's attempts to continue his baseless attacks on Wilson, and specifically, the Court stated, "having now thoroughly pursued the filings and counter filings, I find father's contentions vis-à-vis attorney Wilson to be devoid of merit" as they rely on allegations substantially predating the appeal issues that are the basis of the Court of Appeals' remand. The court further concluded that "father's motions for sanctions and punitive contempt against attorney Wilson lack substantial justification within the terms of C.R.S. § 13-17-102(2) in that they are substantially frivolous, substantially groundless, and substantially vexatious, *see* C.R.S. § 13-17-102(4), and father knew or reasonably should have known it, *see* C.R.S. § 13-17-102(6)." The court awarded Wilson reasonable attorney fees and related costs for having to respond to and defend against father's motions.

ATTORNEY FEES

The Court awarded Wilson reasonable attorney fees in accordance with C.R.S. § 13-17-202. The "reasonableness" of the requested attorney fee is first evaluated through a "lodestar" calculation which is reached by calculating "the number of hours reasonably expended multiplied by a reasonable hourly rate and carries with it a strong presumption of reasonableness." *Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 147 (Colo. App. 1996).

Taking into account the presumption in favor of the lodestar approach, the attorney fee may be adjusted based on the result achieved, the time and effort expended, the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the clients, the experience of the attorney, and awards in similar cases. *Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 147 (Colo. App. 1996); *citing, Colorado R. Prof. Conduct 1.5* (setting forth factors). *See also, Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (setting forth twelve factors relevant to the reasonableness of the fee requested).

Madeline Wilson, as the party claiming a fee, has the burden of proving that the fees requested are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *Blum v. Stenson*, 465 U.S. 886, 897 n.11 (1984) (holding that burden is on fee applicant to produce satisfactory evidence that requested rates are in line with those prevailing in the community). To meet this burden, counsel has attached as **Exhibit A** an Affidavit in Support of Bill of Costs and Attorney Fees, verifying the accuracy of billing records kept by the attorneys in the normal course and scope of rendering legal services to Madeline Wilson. *Compare, National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir. 1982) (requiring applicant to attest to itemized statement indicating [1] the date on which the service was performed, [2] the time expended on each such date, [3] a description of the service rendered, and [4] the identity of the person performing the service).

Wilson's attorney, Brett Huff, is admitted practice before the United States Supreme Court, the United States Tenth Circuit Court of Appeals, the United States District Court for the District of Colorado, the United States District Court for the District of Wyoming, as well as Colorado and Wyoming State Courts. He has been a practicing attorney since 2001 and has represented clients in 30 bench and jury trials in Wyoming and Colorado courts. He has extensive experience representing professionals, such as attorneys, dentists, nurses, real estate brokers and accountants in cases involving claims of professional negligence and malpractice. He also practices in other areas of the law, such as insurance, personal injury, trucking law,

insurance law, commercial law, subrogation, premises liability, real estate law, and collections. In this case, Mr. Huff has successfully represented Ms. Wilson for more than 7 years in multiple frivolous and vexatious claims and lawsuits asserted by Harrington. The reasonableness of the rates charged by Mr. Huff, referred to as BNH in the billing records, is supported in [Exhibit A](#), which sets forth his qualifications, experience, background and practice areas. *Compare Environmental Defense Fund v. EPA*, 672 F.2d 42, 50 (D.C. Cir. 1982).

Ms. Wilson incurred attorney fees in defending against Harrington's substantially frivolous, substantially groundless, and substantially vexatious filings in this matter in the amount of \$6,177.50. This amount is more fully detailed in [Exhibit B](#), as follows:

Brett N. Huff – Partner – 35.3 hours @ \$175.00/hr = \$6,177.50.

The total of all reasonable attorneys' fees requested: \$6,177.50

COSTS

The Court in its Order After Remand also awarded Ms. Wilson her reasonable costs in having to respond to father's filings. In contrast to attorney fees, Colo. R. Civ. P. 54(d) provides that "costs" shall be allowed as a matter of course to the prevailing party, unless the court otherwise directs. "In the absence of a specific prohibition, the awarding of costs is within the sound discretion of the trial court, and will not be reversed on appeal absent a clear abuse of discretion." *See Ballow v. PHICO Ins. Co.*, 878 P.2d 672, 684 (Colo. 1994); *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936, 940 (Colo. 1993); *Rossmiller v. Romero*, 625 P.2d 1029, 1030 (Colo. 1981); *Church v. American Standard Ins. Co.*, 764 P.2d 405, 406 (Colo. App. 1988).

An illustrative but non-exhaustive list of items includable as costs is set forth in C.R.S. § 13-16-122(1):

- (a) Any docket fee required by article 32 of this title or any other fee or tax required by statute to be paid to the clerk of the court;
- (b) The jury fees and expenses provided for in article 70 of this title;

- (c) Any fees required to be paid to sheriffs pursuant to section 30-1-104, C.R.S.;
- (d) Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in the action;
- (e) The witness fees, including subsistence payments, mileage at the rate authorized by section 13-33-103, and charges for expert witnesses approved pursuant to section 13-33-102(4);
- (f) Any fees for exemplification and copies of papers necessarily obtained for use in the case;
- (g) Any costs of taking depositions for the perpetuation of testimony, including reporters' fees, witness fees, expert witness fees, mileage for witnesses, and sheriff fees for service of subpoenas;
- (h) Any attorney fees, when authorized by statute or court rule [i.e., as described above];
- (i) Any fees for service of process or fees for any required publications; [and]
- (j) Any item specifically authorized by statute to be included as part of the costs.

C.R.S. § 13-16-122; *see also*, *American Water Dev. v. City of Alamosa*, 874 P.2d 352 (Colo.), *cert. denied*, 130 L.Ed. 2d 491, 115 S. Ct. 575 (1994) (affirming award of \$5,000 in costs for setting up an office, leasing office furniture and equipment, and for photocopying expenses and \$1,500 for postage, for messengers, for mileage, and telephones -- all related to the successful conduct of litigation); *Cherry Creek School District #5 v. Voelker*, 859 P.2d 805, 813 (Colo. 1993) (affirming award of costs incurred in taking discovery depositions where the taking of the deposition and its general content were reasonably necessary for the development of the case in light of facts known to counsel at the time the deposition was taken).

Applying the law to the costs requested in this case, all of the costs were reasonable and necessary in defending this case. Based on the billing records as documented in **Exhibit B**, Ms. Wilson requests that she be awarded costs in the amount of \$41.70 pursuant to Rule 54(d) and C.R.S. §13-16-107.

WHEREFORE, pursuant to the legal authority and argument contained herein, Ms. Wilson respectfully request the Court to award her attorneys fees in the amount of \$6,177.50, costs in the amount of \$41.70, for a total amount of \$6,219.20.

Dated this 23rd day of March, 2009.

Respectfully submitted,

*SIGNATURE OF BRETT N. HUFF ON FILE AT
THE OFFICES OF HUFF & LESLIE, LLP*

By: _____

Brett N. Huff, #32071
HUFF & LESLIE, LLP

ATTORNEYS FOR MADELINE WILSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2009 a true and correct copy of the foregoing was electronically filed with LexisNexis and served upon the following:

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