

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	<hr/> ▲ COURT USE ONLY ▲ <hr/> trial court case No. 99 DR 3717 Div. 9 / Jack Berryhill, judge
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
FATHER’S MOTION FOR RECONSIDERATION PURSUANT TO C.R.C.P. 59	

Sean L. Harrington, father, submits the within MOTION FOR RECONSIDERATION PURSUANT TO RULE 59, and would show unto the Court the following:

1. On or about May 11, 2009, this Court entered an Order denying father’s prior Rule 59 and recusal motions. Although the Order was issued on May 11th and presumably mailed by LexisNexis (from Washington state), father has not yet received a copy of the Order.¹ Because there is a fifteen day time limit on the filing of the within Motion, father cannot delay any longer waiting for the Order to arrive.

2. Although the May 11th Order denied father’s recusal motion “for substantially the same reasons as set forth in the Chief Judge’s [April 2, 2009] Order,” the May 11th Order then directed non-party Wilson to set a hearing for costs and attorney fees.

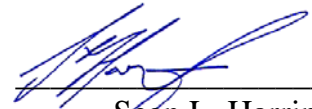
3. The award of attorney fees to Wilson is erroneous for the following reasons:
 - a) The May 11th Order conflicts with the Chief Judge’s April 2, 2009 Order, which denied Wilson outside-counsel’s attorney fees because Wilson is a non-party and does not have standing in this case. 4/2/2009 Order at 2. This has become law-of-the-case (unless it is subsequently set aside by the Court of Appeals). Generally, a party has the right to rely on orders of the court as law of the case. *Blood v. Qwest Servs. Corp.*, 2009 Colo. App. LEXIS 716 (Colo. Ct. App. Apr. 30, 2009) Prior relevant rulings made in the same case should be followed. *Id.*

¹ The text of the Order was read over the phone to father by a clerk in the “domestic” division.

b) The May 11th Order contravenes C.R.S. § 13-17-102(6), which provides that attorney fees may not be awarded against a party appearing without an attorney unless the Order contains express findings that the party's claims or defenses or any portion thereof is substantially vexatious, substantially frivolous, or substantially groundless. Specifically, the court must find that plaintiff clearly knew or reasonably should have known that the suit lacked substantial justification. *See Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

c) Finally, although an award of attorney fees is ordinarily separate from an underlying judgment, the issue of whether Madeline Wilson —non-party and former counsel-of-record— is entitled to proceed as a party in this case and recover outside counsel's fees is an issue pending appeal. So long as this Court continues to award Wilson her outside counsel's fees, it is passing judgment on the issue of whether she has standing to seek and recover such fees, which issue this Court lacks jurisdiction over while appeal No. 09CA0751 remains pending.

Submitted this 21st day of May, 2009.


Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of May, 2009, a true and accurate copy of the foregoing *RULE 59 MOTION* has been mailed, first class postage prepaid, to the following:

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

and by electronic mail to:

David H. Yun (DYun@jalegal.com);
Brett N. Huff (bhuff@huffandleslie.com); and
Christy C. Ryan (cryan72@msn.com).

