

<b>First Judicial District Court</b> 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
<b>In re the Marriage of:</b>  Petitioner: <b>CHRISTY HARRINGTON,</b> <b>n/k/a   CHRISTY RYAN</b>  and  Respondent: <b>SEAN L. HARRINGTON</b>	
Sean L. Harrington P.O. Box 351855 Westminster, CO 80035	↑ <b>COURT USE ONLY</b> ↑ Case Number: 99DR3717 Division 9
<b>Father’s Reply in Support of Motion for Continuance and Motion <i>in Limine</i></b>	

1. Father admits the allegation of [Wilson’s Answer](#) at Paragraph 1 (that father, several months ago, agreed upon an October 8<sup>th</sup> hearing date and requested to appear by telephone).
2. Father denies the allegation of Wilson’s Answer at Paragraph 2: None of father’s cases have been dismissed as “groundless, frivolous, and vexatious.”
  - 2.1. 01CV1376 (First Judicial District Court) was voluntarily dismissed by father pursuant to November 6, 2001 stipulated agreement, whereby Wilson waived all of her claims (including attorney fees awarded by this Court) in order to avoid being held answerable for her tortious conduct up until that time.
  - 2.2. 01CV1377 (First Judicial District Court) was voluntarily dismissed by father because it was merged with 01CV1376.
  - 2.3. The federal case ([05-cv-01858](#)) was dismissed with prejudice for lack of jurisdiction by former Chief Judge [Edward W. Nottingham](#), who reasoned that he could not figure out how to open and review a fully-hyperlinked digital brief in the federal court’s CM/ECF filing system and, therefore, would not read it.<sup>1</sup> Nottingham’s ruling was reversed by the Tenth Circuit, and the case was remanded as dismissed **without prejudice**. [Harrington v. Wilson](#), 242 Fed. Appx. 514, 2007 U.S. App. LEXIS 17252 (10<sup>th</sup> Cir., 2007).

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<sup>1</sup> It was later reported in the press that Nottingham was surfing pornographic Web sites in chambers. This is a more likely explanation why he declined to read litigants’ briefs.

- 2.4. In [07-04-274](#) (271<sup>st</sup> Judicial District Court, State of Texas), the Court granted Wilson's special appearance citing lack of minimum contacts **because Wilson falsely swore under oath in Colorado (in violation of §§ 18-8-502 & 18-8-306) and submitted perjured testimony** to induce the Texas court to rule in her favor.
- 2.5. All of [Wilson's five \(5\) restraining order applications](#) against father since 2000 through 2006 have all been denied on the merits, vacated, or dismissed.

To this day, father has been denied his "day in court" and Madeline Wilson has never been held accountable for her perjury, her lack of candor to this tribunal, her false statements, her misleading omissions, her aiding and abetting the concealment of a minor child, her violations of this Court's orders, her knowing violation of the [May, 2007 Texas injunction](#) that prohibited her from filing her [August, 2007 "Emergency Motion Regarding Jurisdiction"](#) in this Court, and her use of the client's case to pursue a personal vendetta against father. **Not only are these ultimate facts an indelible part of the record in this case in the form of e-mail correspondence written by Wilson, but also the "newly discovered evidence," discussed below, further substantiates these claims.**

Although it is understandable that Wilson and her counsel would toil limitlessly to avoid being held accountable, this Court should not countenance her deceptive arguments and false claims and should denounce her request to use this Court to punish the victim of her crimes.

3. Father denies the allegation of Wilson's Answer at Paragraph 3: Indeed, it is because Harrington has not "exclaimed many times before that he has found 'new evidence' to prolong this case, to try and avoid the statute-of-limitations," or to perpetuate discord, that Wilson failed to point to any prior example in support of her conclusory allegation.

4. Father denies that the [September 12, 2009 Deposition of Christy Ryan](#) (Petitioner in this matter and Wilson's former client) is "a disingenuous smokescreen." It is damning and irrefutable testimony adduced from the only other true party to this case.

5. Because, father has not filed a Rule 60(b) Motion, immaterial is Wilson's assertion in ¶¶ 5 – 8 of her Response that Rule 60(b)(2) forbids consideration of newly discovered evidence that could not have been previously discovered through reasonable diligence.<sup>2</sup> Rather, father has filed a Motion for continuance and a Motion in *limine*. If this Court had jurisdiction, father may have filed a Motion under Rule 59 on the basis of newly discovered evidence.<sup>3</sup>

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<sup>2</sup> Moreover, this Court would lack jurisdiction while the appeal is pending to rule on such a Motion.

<sup>3</sup> Under Rule 59, the following requirements are required to sustain a motion for new trial on the grounds of newly discovered evidence: (1) The evidence could not have been discovered in the exercise of reasonable diligence and produced at the trial; (2) the evidence is material to some issue before the court under the pleadings; (3) if received, the evidence would probably change the result. *Kennedy v. Bailey*, 453 P.2d 808 (Colo., 1969)

6. Father denies the opposing counsel's false claim that father failed to confer pursuant to Rule 121, § 1-15(8):

6.1. Opposing counsel has given informed consent to father to *not* conferring prior to filing a Motion. Opposing counsel, In his [December 19<sup>th</sup> 2008 Reply in Support of Motion to Strike](#), wrote:

Harrington argues that Wilson and her attorney are in violation of court rules in having failed to confer with him before filing the Motion to Strike. Harrington is misguided on the law. C.R.C.P. 121 §1-15(8) sets forth the duty to confer and states, "Moving counsel shall confer with *opposing counsel* before filing a motion." [Emphasis added] . . . [T]he rule explicitly states that there is a duty to confer with "opposing counsel" and thus the rule does not apply to Harrington, who is not an attorney, but a *pro se* plaintiff.

By this logic then, Harrington has no duty to confer either, because the Rule states, "*Moving counsel* shall confer with opposing counsel before filing a motion." [Emphasis added]. Therefore, by this argument, any objection was henceforth waived and is now barred under the Invited Error doctrine and judicial estoppel.

6.2. Father attempted to confer with opposing counsel on on 6/02/2009 (*see* [Exhibit A](#)) and 9/28/2009 regarding the Motion for Continuance. *See* father's [Motion for Continuance](#) at ¶9. This is not the first time opposing counsel has factually misrepresented the duty-to-confer. In his [April 1<sup>st</sup> 2009 Response](#), he also claimed father did not confer and father also attached a copy of his e-mail to opposing counsel as an exhibit to his [April 1<sup>st</sup> 2009 Reply](#).

6.3. Opposing counsel is mistaken in his belief that the Rule requires father to supply a draft copy of his Motion —if he had one at that time— for review.

6.4. Regarding father's Motion *in limine*, father contacted opposing counsel **four (4) times** on 8/04/2009, 7/28/2009, 6/02/2009, and 5/29/2009.<sup>4</sup> **Opposing counsel chose not reply to any of the these four e-mails.** Thus, even if father had not attempted to confer with opposing counsel on 9/28/2009, the duty was vitiated by impossibility. The committee comments to the Rule note that, "This duty to confer is not required in all cases" and the law never requires a futile act. In fact, opposing counsel wrote that, "*Under this rule, there is no need to confer when conferral would be useless.*" *See* [December 19<sup>th</sup> 2008 Reply in Support of Motion to Strike](#) at 2.

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<sup>4</sup>By way of example, a copy of father's 6/02/2009 e-mail is attached hereto and made part hereof by reference as, "[Exhibit A](#)."

- 6.5. The Committee comments further note that the duty-to-confer does not exist for post-trial Motions. Because father is seeking post trial relief, the duty-to-confer would not attach (although this is immaterial, because he did attempted to confer. *See* ¶ 6.1, *supra*).
7. Next, Wilson claims father refused to identify the newly discovered evidence. This is false. Prior to opposing counsel’s drafting of this Motion, father hand-delivered the newly discovered evidence (time-stamped 3:24 p.m.). The evidence was the [September 12, 2009 Transcript of Deposition Testimony of Christy Ryan](#) taken in Texas, which, under the Texas Rules of Civil Procedure, did not become “official” until after twenty (20) days had passed to afford the deponent an opportunity to correct any errors alleged. The twenty days expired on Friday, October 2<sup>nd</sup> 2009. Today is Monday, October 5<sup>th</sup> 2009.
8. Finally, Wilson does not dispute that the scope of the hearing, if held without a limited remand from the Court of Appeals, must be limited in scope to exclude the sufficiency of father’s evidence, father’s motives, and the underlying legal conclusions cited by this Court in its awarding of attorney fees. *See* C.R.C.P. § 8(d) (“Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading”); *Tovrea v. Denver & Rio Grande Western R.R. Co.*, 693 P.2d 1016 (Colo. App. 1984) (If the issue raised by the pleadings is not objected to, the parties’ consent is implied); *Donovan v. City of Haverhill*, 311 F.ed 74, 76 (1st Cir. 2001) (The failure to argue a point means that the issue has been waived).

**WHEREFORE**, father requests an Order of this Court continuing the hearing until the appeals court has ruled on the Motion for Limited Remand or, in the alternative, granting the father’s Motion *in limine*, limiting the scope of the hearing to issues that are not on appeal.

Submitted this 5<sup>th</sup> day of October, 2009.


  
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Sean L. Harrington

**CERTIFICATE OF MAILING**

I hereby certify that on the 5<sup>th</sup> day of October, 2009, a true and accurate copy of the foregoing *REPLY* 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](mailto:DYun@jalegal.com)); Brett N. Huff ([bhuff@huffandleslie.com](mailto:bhuff@huffandleslie.com)); and Christy C. Ryan ([cryan72@msn.com](mailto:cryan72@msn.com)).

  
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## Marriage of Harrington

From: **Sean Harrington** (esoxlucios@msn.com)  
Sent: Tue 6/02/09 11:52 AM  
To: Brett Huff (bhuff@huffandleslie.com)

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Brett:

Last week, I asked you for your position on my proposed Motion in Limine. Today, I'm thinking that I may style it as a Motion for Continuance or, in the alternative, as a Motion in Limine. Here's why:

As you know, a trial court retains jurisdiction to award attorney fees in connection with a judgment that's already on appeal. Further, the court has jurisdiction to enforce its judgments during appellate pendency, unless a stay has been granted.

However, in this case, the hearing is for the purposes of evaluating the factors under 13-17-103. Some of these *required* factors require the judge to make further findings regarding my motives, the availability of facts known to me, etc. *See generally* section 13-17-203(1)(a) ~ (h). In my opinion, any discussion of this runs afoul of the general rule that, once an appeal is taken, a trial court is divested of jurisdiction to determine substantive matters that directly affect the judgment being appealed absent an appellate court remand order. *Molitor v. Anderson*, 795 P.2d 266 (Colo. 1990).\* (I would object to any motion for a limited remand). And, as I noted in an earlier e-mail, if the underlying judgment is reversed or vacated, the attorney fees upon which it was based must necessarily be vacated.

Because I believe the trial court does not presently have jurisdiction to consider all the required factors of 13-17-203, I believe the hearing should be continued. In the alternative, I would ask *in limine* for the hearing to be limited in scope solely to the reasonableness of the fees (what Berryhill described in his Feb. Order as, "*the number of hours spent, how they were spent, and the applicable hourly rate*").

Finally, if you, Tom and I are going to attempt to hammer out an Agreement over the next several weeks, it would save all parties needless expense to continue the hearing until and unless it becomes certain that an Agreement could not be reached.

Sean

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\* This is because the appeal --which does not challenge the attorney fees award (which hasn't yet been established)-- does challenge the order insofar as the order offers several legal conclusions as to why my motions and claims were groundless, frivolous and/or vexatious.

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