

(quoting the advisory committee's note to F.R.C.P. 11). In *Braley v. Campbell*, 832 F.2d 1504 (10th Cir. 1987), the court explained that an attorney facing sanctions has the same right to explain and defend oneself as one facing any other court-ordered loss of property. The United States Supreme Court has held that sanctions "should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." *Roadway Express v. Piper*, 447 U.S. 752, 767 (1980). An attorney must be given the opportunity to be heard before sanctions including costs and attorneys' fees can be imposed. C.R.C.P. 37(4)(a). Specifically, an attorney may request a hearing before Rule 37 sanctions can be imposed. *Brown v. Silvern*, 141 P.3d 871, 874-875 (Colo. 2005); *Trattler v. Citron*, 182 P.3d 674, 680 (Colo. 2008). In the instant case, Harrington sought sanctions directly against Wilson. Accordingly, she had a due process right to retain counsel and defend herself from the imposition of such sanctions, including filing responsive briefs.

The Respondent's request for a declaratory judgment that would deny Wilson the ability to obtain a restraining order against the Respondent similarly invokes due process protections. The purpose of a restraining order is to protect the safety of an individual. Wilson's ability to protect herself from the Respondent is a fundamental right and due process requires that she be given the opportunity to so.

II. Wilson Was Not Required to Intervene to Defend Herself Because She Was Not a Stranger to the Case and Was Brought Into the Case by Respondent

Respondent was sanctioned by the Court because his motions against Wilson were substantially groundless, frivolous and vexatious. Respondent now argues that he should be absolved for his wrongful actions and escape the Court ordered sanctions because Wilson did not intervene in this action under C.R.C.P. 24. However, Rule 24 does not require an attorney who is responding to a request for sanctions to intervene in the underlying action. Rule 24 is designed

to allow individuals outside a lawsuit the opportunity to become a part of the lawsuit “when the applicant claims an interest relating to the property or transaction which is the subject of the action.” C.R.C.P. 24. Its purpose is to allow an individual to participate in a case in which he has an interest or which legally may bind him. *See Tekai Corp. v. Transamerica Title Ins. Co.*, 571 P.2d 321 (Colo.App. 1997); *City of Delta v. Thompson*, 548 P.2d 1292 (Colo.App. 1975).

In the present matter, Wilson was not outside the case because she represents the Petitioner. Furthermore, Wilson does not have an interest in the marriage dissolution that forms the underlying action. Wilson’s only personal interest here is defending herself against the Respondent’s requests for sanctions and declaratory judgment against her that have already been found to be frivolous, groundless and vexatious. Rule 24 does not address attorneys defending themselves against sanctions and declaratory judgment requested by a party and therefore is inapplicable to this scenario. In this situation, fundamental notions of due process allow the attorney to defend herself without seeking intervention.

For the sake of argument only, even if intervention was required, an analysis under Rule 24 would surely result in Wilson being allowed to intervene as a matter of right where a party is formally requesting the Court to deprive her of property and the ability to protect herself from physical harm at the hands of the Respondent. The Court, if it so desired, would be well within its authority to make such a simple finding *sua sponte*. Accordingly, applying the Rule 24 process here would waste precious judicial resources and run afoul of well-established notions of judicial economy. Indeed, these considerations are why Rule 24 is not intended to apply to these situations where the person defending herself is already participating in the proceedings and has such an obvious and clear interest.

Moreover, Respondent's argument is self-defeating. If Wilson was required to formally intervene in this action to defend herself, then the same reasoning would have required the Respondent to formally join Wilson as an indispensable party pursuant to C.R.C.P. 19 prior to seeking sanctions and declaratory judgment against her. Respondent benefited from Wilson's role as counsel in these proceedings by filing motions directly against her without having to formally join her as a party pursuant to Rule 19. Now, Respondent incredulously argues that Wilson's role as counsel in these proceedings does not allow her to defend herself from his motions absent formal intervention pursuant to Rule 24. Respondent should not be allowed to evoke procedural requirements only when they benefit him.

The undersigned has conducted exhaustive research to find cases that are factually similar to the present matter where intervention was required. Counsel has not found a single case to support the Respondent's argument. There are a multitude of cases addressing attorneys' due process rights to have hearings, file responsive briefs, and obtain counsel to defend themselves from sanctions. However, none of those cases mention the attorney first needing to intervene in the underlying action. *See Brown v. Silvern*, 141 P.3d 871 (Colo. 2005); *Eisenberg v. University of New Mexico*, 936 F.2d 1131 (10th Cir. 1991); *Bralely v. Campbell*, 832 F.2d 1504 (10th Cir. 1987); *Roadway Express v. Piper*, 447 U.S. 752 (1980).

III. Allowing Respondent to Avoid the Court's Sanctions Through Employment of an Untenable "Loophole" Would Result in a Severe Injustice

The Respondent has attacked Wilson personally and directly in county court, state court and federal court. These attacks are in retaliation for Wilson successfully representing the Petitioner in the underlying marriage dissolution action. Although the Respondent has tried mightily to smear Wilson's reputation and obtain money damages from her, he has failed in every attempt. Moreover, the Court has most recently sanctioned the Respondent for filing the

very motions that sparked this absurd dispute. With few straws left to grasp, Respondent now attempts to escape his sanctions by asserting that Wilson was required to intervene before defending herself. Adopting Harrington's groundless argument would set an unwieldy, unpredictable, and dangerous precedent whereby a party who asserts baseless claims and is consequently sanctioned would be motivated, and potentially rewarded, to waste more of the Court's time and resources to avoid the inevitable consequences of his unlawful harassment.

CONCLUSION

Wilson was not required to intervene in this action before defending herself from the *pro se* Respondent's request for sanctions and declaratory judgments against her.

DATED this 7th day of November, 2009.

Respectfully submitted,

*Original signature on file at the offices of
Huff & Leslie, LLP per C.R.C.P. Rule 121 § 1-26(9)*

By: s/ Brett N. Huff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 7, 2009, a true and correct copy of the foregoing was served electronically by email as service upon the following:

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