

<b>FIRST JUDICIAL DISTRICT, STATE OF COLORADO</b> 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	
In re the Marriage of: <b>Petitioner:</b> CHRISTY RYAN and <b>Respondent:</b> SEAN HARRINGTON	<b>▲ COURT USE ONLY ▲</b>
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	trial court case No. 99 DR 3717  Div. 9 / Hon. Jack Berryhill
<b>FATHER’S BRIEF IN OPPOSITION TO MADELINE WILSON’S LEGAL MEMORANDUM REGARDING INTERVENTION</b>	

Sean L. Harrington, father, respectfully submits the within BRIEF IN OPPOSITION TO MADELINE WILSON’S LEGAL MEMORANDUM REGARDING INTERVENTION. In support thereof, father states as follows:

**SUMMARY OF THE ARGUMENT**

Wilson’s most revealing argument is that compliance with Rule 24 “*would waste precious judicial resources,*” (11/07/2009 Brief at 3) and that “*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.*” *Id.* [emphasis added]. In other words, Wilson believes the Rule is inconvenient and, because she was already participating as a party-litigant without leave of the court, she should be “grandfathered” in.

Although it is a vindication of sorts for father that Wilson has finally admitted that she was both counsel-of-record and a participant, the Court will easily recognize as fatal any argument that compliance with the Rules of Civil Procedure is burdensome. Accordingly, the Court must find that Wilson willfully disregarded the Rule, that she did so without privilege or legal authority, and that her disrespect for the substantive and procedural Rules of this tribunal are intolerable.<sup>1</sup>

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<sup>1</sup> See, e.g. 11/07/2009 Brief at 4, where Wilson characterizes Rule 24 as a mere “Loophole.”

Another of Wilson's principle arguments is that, "*Wilson was not required to intervene because she . . . was brought into the case by [father].*" 11/07/2009 Brief at 2. This contention is singularly untenable, because she asserts that a party's objections to a non-party's improper involvement has the legal effect of circumventing Rule 24 by conferring party-status upon the non-party. It is also disrespectful of the truth, because it overlooks Wilsons' affirmative meddling in the case. Said differently, Wilson brought herself into the case.

The matter before the Court is best analogized, in dicta from *In re Comm. On Judicial Conduct and Disability*, 517 F.3d 558, 566 (U.S. Jud. Conf. 2008):

[M]isconduct proceedings under the Judicial Conduct and Disability Act are adversarial only to the extent that they may be initiated by complaint and usually allow interested parties some opportunity to present their respective view of the events in question. Fundamentally, however, misconduct proceedings are inquisitorial and administrative. Chief circuit **judges need not passively await the filing of complaints and then referee a contest between a complainant and [respondent]**, bounded by the four corners of the complaint. [emphasis added].

Father contends that the Court should have taken father's complaints regarding Wilson's unethical conduct under advisement in its supervisory capacity and held a hearing on the matter, rather than permitting Wilson to engage in unfettered litigation.

Thousands of attorneys each year face sanctions in state and federal courts on the courts' own motions or brought by opposing counsel. In virtually all of these cases, the courts decide these matters by means of their inherent powers or by rule authority over officers-of-the-court. Formal intervention is not required, because the misconduct matter is disposed of administratively between the court and accused attorney (rather than as a controversy between the parties-in-interest). When attorney misconduct affects the underlying controversy, the attorney's withdrawal is usually required.

Rarely, if ever, have any of these attorneys been so incompetent or ill-prepared to defend their misconduct that it became necessary to hire outside counsel to enter an appearance in their client's underlying case for the ostensible purpose of extricating the offending attorney or to limit her accountability therefor. Doubtless, this is why

opposing counsel complains he has conducted “*exhaustive research to find cases that are factually similar to the present matter,*” but found none. Rarer still is the recalcitrant attorney who asserts personal claims or property interests in her client’s cause. If it happens, intervention is mandatory.

Contrary to Wilson’s argument, fundamental notions of due process do not allow an attorney to “*defend herself without seeking intervention.*” 11/07/2009 Brief at 3. Rather, the purpose behind the intervention procedure is to protect the due process rights of all participants by protecting the integrity of the proceedings.

Also contrary to Wilson’s unsupported argument that an unwritten exception should be read into Rule 24 for counsel-of-record are authorities from this and other jurisdictions that maintain an attorney is not a party to a case and should rarely, if ever, be permitted to participate in the client’s cause.

In Colorado, the attorney believing that his situation is an exception to this basic tenet must plead his case with a Motion and a pleading. This procedural device affords the Court an opportunity to ascertain the propriety of the non-party’s proposed intervention and would avoid the multiplication of the proceedings (present here), created by a non-party’s unauthorized participation in the litigation.

Wilson’s lead argument is that an attorney facing sanctions has a due process right to defend herself. Father agrees: Americans have constitutional or statutory rights to sue for declaratory relief, injunctive relief, and damages. Parties properly before the Court have the right to request hearings, seek judicial review of magistrate decisions, request protective orders in discovery matters, and request *in camera* review of privileged documents. Journalists have the right to petition to have documents unsealed or to seek expanded media coverage. Persons-in-interest have the statutory right to an appeal in certain circumstances. And non-parties have the right to intervene to assert or **defend** against claims, when they have a property interest at stake.

In all of the foregoing examples, there are procedures established that prescribe how and when these rights are exercised. The procedure may be a Notice of Appeal, or a Certificate of Review; a CGIA claim notice, or a non-resident cost bond; a Motion to Quash, or a Garnishment Summons; a Special Appearance, or a Motion to Intervene.

Fortunately, which procedure to use usually is not guesswork, as it is set out in the Rules of Civil Procedure. The persons believed to have the best working knowledge of these rules is, of course, practicing attorneys — Practicing attorneys not unlike Madeline Wilson and Brett Huff.

Thus, the question is not whether Madeline Wilson has a right to counsel or the right to defend against allegations, but whether she is exempt, as an officer-of-the-court, from the Rules of Civil Procedure.

Finally, Wilson’s claim that she “*does not have an interest in the marriage dissolution that forms the underlying action,*” when, in fact, she sought relief from this Court because, “*Sean has really ‘asked for it’ by involving my children . . . I would like to see him go into lock-down for 180 days,*” is so outrageous and offensive to the dignity of the Court, that the Court should have sanctioned her *sua sponte*, without any suggestion from father.

### ARGUMENT

1. In *Marriage of Ensminger*, 209 P.3d 1163, 1166 (Colo. Ct. App. 2008), the Colorado appeals court interpreted 13-17-102(4) to provide for the assessment of attorney fees in a non-party’s favor, where wife attempted to subpoena an unwilling participant, who had nothing whatever to do with the case and who possessed no relevant information. Here, Wilson was already subject to this Court’s authority as an officer-of-the-court, and she also voluntarily and inextricably intertwined herself into the case, proceeding as an unrestrained party litigant. But, the more important distinction in *Ensminger* is that, by filing a Motion to Quash (tantamount to a “special appearance”), the non-party brought himself properly before the court by employing the prescribed procedural device.

2. Intervention is the procedural device prescribed for a non-party to enter the case for the purpose of presenting a claim **or defense**. The concept of intervention proceeds from the principle that the efficient resolution of an adversarial proceeding often requires the addition of other persons whose interests might be jeopardized by the resolution of the controversy between the original parties. *People v. Ham*, 734 P.2d 623, 625 (Colo. 1987).

However, “Custody cases aren’t adversarial proceedings” (*Rayer v. Rayer*, 512 P.2d 637, 639 (1973); *Marriage of Bozarth*, 779 P.2d 1346, 1352-53 (Colo.1989) (same)) and “Intervention by third parties in dissolution proceedings usually is discouraged.” *Marriage of Shapard*, 129 P.3d 1007, 1009 (Colo.App. 2004). Nevertheless, to overcome these presumptions, C.R.C.P. 24 requires, “[a] person desiring to intervene shall serve a motion to intervene upon the parties . . . The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.” *People v. Anderson*, 828 P.2d 228, 230-31 (Colo. 1992).

In *Public Service Co. v. Blue River Irrigation Co.*, 753 P.2d 737, 740 (Colo. 1988), the Colorado supreme court held that a non-party's filing of an Entry of Appearance was analogous to the filing of a defective Motion to Intervene, and, when a technically defective Motion to Intervene is filed, the existing parties may waive their right to object to the intervention by failing to make timely objections. Here, Brett Huff (not an intervenor with any interest in the litigation) filed an Entry of Appearance on Wilson’s behalf, and father promptly raised objections thereto. Although this Court eventually overruled father’s objections, the Court’s analysis was limited to Wilson’s constitutional right to defend against father’s claims. But, the court’s inquiry should not have ended there:

First, the gist of father’s objections concerned not Wilson’s due process rights, but father’s due process rights, prejudiced by Wilson’s participation in the proceedings in violation of Rule 3.7, which the Court did not address. If Wilson had filed a Motion to Intervene with the mandatory accompanying pleading, she would have been required to confront and overcome this issue. *See Capitol Industrial Bank v. Strain*, 166 Colo. 55, 58-59 (Colo. 1968) (explaining that the “positive requirement of [Rule 24] is that a pleading must also be filed . . . The failure of the trial court to insist on compliance with

the rules in this case amounted to a denial or the defenses which the creditor proposed to plead to the intervenor's claim, if and when filed.”).

Second, Wilson has never argued that Huff's Entry of Appearance should be construed as a defective Motion to Intervene. Rather, she defiantly maintains that she is exempt from the Rule.

Third, until and unless the Court construed Huff's Entry of Appearance as a defective Motion to Intervene, Wilson was not a party and her participation, including pleadings and affirmative requests for relief, was unauthorized. *See* 6-24 Moore's Federal Practice - Civil § 24.20 (“Leave of court is not a prerequisite for the filing of a motion to intervene. However, the intervenor is not considered a party unless leave to intervene is granted . . . Compliance with these requirements is mandatory”) (citing Fed.R.Civ.P. 24).<sup>2</sup> *See also Hercules Equip. Co. v. Smith*, 335 P.2d 255, 257 (1959) (The nonparty who files motions and pleadings but does not comply with this Rule is a mere interloper, who acquires no rights by such unauthorized action unless objections thereto are waived). (quoting 67 C.J.S. Parties §64, p. 1001); *Law Offices of Andrew L. Quiat*, 917 P.2d 300, 304 (Colo.App. 1995) (Where Law Offices' were not granted leave to intervene, Law Offices' motion to modify or vacate a judgment was properly denied, because Law Offices was not a party to the principal action).

3. As Wilson concedes, there is no authority for her proposition that Rule 24 contains some implied exception for attorneys who are *responding* to a request for sanctions.

11/07/2009 Brief at 3. Counsel's failure to cite any authority “suggests either that there is no authority to sustain [his] position or that [he] expects the court to do [his] research.”

*Rapid Transit Lines, Inc. v. Wichita Developers, Inc.*, 435 F.2d 850, 852 (10<sup>th</sup> Cir. 1970).

Quoting C.R.C.P. Rule 24, the appeals court made clear that a non-party seeking to assert either a claim **or a defense** comes within the ambit of the rule:

Although a pleading was not attached to investors' motion, they were not asserting a “claim or defense” in the sense in which those terms are normally used; they sought only to present objections to the proposed settlement

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<sup>2</sup> *See Ham, supra* 734 P.2d at 625, n.3 (“C.R.C.P. 24 . . . is essentially identical to Fed.R.Civ.P. 24”).

agreement . . . Under such circumstances, the failure to attach a pleading was harmless in light of the limited nature of the requested intervention.

*Feigin v. Securities American, Inc.*, 992 P.2d 675, 679 (Colo.App. 1999) (*rev'd* on other grounds, 19 P.3d 23 (Colo., 2001)). *See also Ham, supra*, (intervention is “for the purpose of presenting a claim **or defense.**”) [emphasis added].

4. In addition to citing no supporting authority, Wilson’s argument misrepresents her participation by omitting discussion of her various *affirmative, non-responsive* pleadings and actions. It is an indelible part of the record that Wilson has been advancing her personal interests in this case for the last ten years. *See Exhibit A*, attached hereto and incorporated herein by reference.

Special Advocate Natalie Van Note’s September, 2001 Report Specifically found that Wilson was a participant and an antagonist both intrinsic and extrinsic to this dissolution matter. *Id.* at 7. As long ago as March 7, 2000, Wilson prepared a Motion captioned, “PETITIONER’S MOTION FOR LIMITED CONTACT BETWEEN HER COUNSEL AND THE RESPONDENT,” surreptitiously filed in her client’s name. More recently, she prepared a May 1<sup>st</sup> 2007 “Emergency” Motion for Contempt against father,<sup>3</sup> also surreptitiously filed in her client’s name, but which was solely to advance Wilson’s personal interest.<sup>4</sup> And in her September 12, 2009 deposition, mother testified that she was confounded by the legal process and that her misguided course of action was directed by Wilson, but that Wilson’s judgment was clouded because of Wilson’s personal involvement.<sup>5</sup>

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<sup>3</sup> (regarding a no-contact covenant pertaining to Wilson within a November 6, 2001 Stipulated/ordered agreement)

<sup>4</sup> Wilson explained to mother, “*The no contact order is specifically for me. We didn’t do the same for you because you had to have contact with Sean for exchanging Shelby,*” and seeking advice from another attorney, Wilson asked, “*Let me know . . . if I could be considered a ‘witness’ in the matter, since it is MY no-contact order.*” In two separate e-mails, Wilson explained to mother the reason for her pursuit of the contempt citation, writing, “*I would like to see him go into lock-down for 180 days,*” and, in another, “*Sean has really ‘asked for it’ by involving my children.*”

<sup>5</sup> As such, Wilson’s conduct—not father’s conduct—vexatiously multiplied the proceedings, a divorce case that has persisted for ten years for a marriage that lasted only seven.

5. Although Wilson has previously insisted, “*mother’s attorney is not a party to this matter and the mother requests that any reference to her attorney as such be stricken*” (See, e.g., January 31, 2005 Response to [Father’s] Motion for Rule 11 Sanctions at ¶4), and, although she now argues, “*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*” (11/07/2009 Brief at 3), the court should review Exhibit A and take Mother’s 9/12/2009 Deposition (docketed as an Exhibit disclosure on or about October 5<sup>th</sup> 2009) under advisement:

Father’s Attorney: . . . [D]idn’t you state that you felt like you had been misled? Didn’t you state that to Sean?

Mother: Yes

Father’s Attorney: And who were you referring to that misled you . . . You were referring to Madeline Wilson, were you not?

Mother: Yes

Father’s Attorney: Do you feel like she misled you concerning – concerning the legal advice that she gave you when you were in Texas? I’m not talking prior to your move.

Mother: No. And I wasn’t just referring to legal advice in Texas. I was referring to the whole thing. I feel like I was confused and not knowing how to maneuver through the whole thing and just – I feel like the whole thing was blown way out of proportion. And that made the whole – everything worse.

Father’s Attorney: Do you feel like you were taken advantage of?

Mother: I don’t know that I feel like that was her intent. I feel like she was very personally involved when, perhaps, she shouldn’t have been.

Father's Attorney: Well, then why – do you feel like that clouded her judgment with regard to the advice that she was giving you?

Mother: Yes.

Father's Attorney: You've had quite a few lawyers throughout this process.

Mother: Too many.

Father's Attorney: Have any of them been that personally involved in your lawsuit?

Mother: No.

Father's Attorney: And that's worked out better, has it not?

Mother: Much better.

6. Very recently, Wilson —not mother— argued, “*there is no need to allocate fees for Dr. Fyfe's services as Dr. Fyfe has already withdrawn from the case and waived the fees in question.*”<sup>6</sup> Although she had no business arguing on behalf of Mr. Fyfe, she later sought her outside counsel's fees for these arguments. She also opposed father's Motion for Substitution of Judge, which she also had no business litigating. Chief Judge Jackson agreed, denying her request for outside counsel's fees:

The party with standing to oppose the motion . . . is [mother] . . . Ms. Wilson's response focuses on Mr. Harrington's accusations levied at Ms. Wilson and her attorney rather than serving as a response on behalf of [mother].

April 2, 2009 Order. *Cf. Jones v. Jones*, 117 Colo. 420, 188 P.2d 892 (1948) (attorney has no standing to seek review of issues which concern only the interests of the parties in the action); *Weeks v. Indep. Sch. Dist. No. I-89*, 230 F.3d 1201, 1213 (10<sup>th</sup> Cir.2000)

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<sup>6</sup> See PETITIONER'S ATTORNEY-OF-RECORD, MADELINE WILSON'S RESPONSE TO SEAN HARRINGTON'S MOTION FOR DECLARATORY JUDGMENT AND FOR CASE MANAGEMENT ORDER at 2.

(counsel have standing to seek review of orders directed at them, but not from orders applicable only to their clients).

7. And, although Wilson now claims she, “*was not outside the case because she represents the Petitioner*” (11/07/2009 Brief at 3), Wilson has previously insisted, “*mother’s attorney is not a party to this matter and the mother requests that any reference to her attorney as such be stricken*” see, ¶5, *supra*. Such a person “*not a party to this matter*” —as Wilson has claimed— who desires to play the role of a party-litigant, has the affirmative obligation to intervene. For years, Wilson filed both motions seeking affirmative relief and responses without prior leave of this Court and over father’s repeated objections. See Exhibit A. Thus, the obligation attached at the moment Wilson interjected herself as a complaining-witness. “Parties litigant have a right to rely upon the rules as written. It is the duty of trial-courts, as well as our duty, to enforce them when timely objection is made by a party to litigation.” *Anderson, supra* at 231.

8. Contrary to Wilson’s argument, the obligation does not fall to the real party-in-interest, who has filed objections regarding the interloper’s meddling, to join the interloper as an indispensable party under Rule 19. Father—who already was a real party to the action— needed to do no more than bring his complaints to the attention of the Court for the purpose of enjoining Wilson’s improper participation in the underlying litigation, because the Court has inherent power over officers-of-the-court appearing before it.<sup>7</sup> In balancing the nonparty’s rights with the duty to protect the integrity of the proceedings, the court should have taken father’s complaints under advisement in its supervisory capacity, because misconduct matters are fundamentally inquisitorial and administrative. See *Weeks, supra*, 230 F.3d at 1208 (“Ordinarily the control of attorneys’ conduct in trial litigation is within the supervisory powers of the trial judge”). It matters

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<sup>7</sup> If the Court acted on father’s repeated requests to enjoin Wilson’s improper participation, the present litigation would not exist and this dissolution case would have been concluded long ago. As more fully set forth in father’s 10/13/2009 Post Trial Brief, Wilson has interfered with and delayed the judicial process and caused needless expenditure of judicial resources. Her actions have been willful, intentional, persistent, and contemptuous.

not whether father's invocation of this Court's supervisory capacity was through a hand-written complaint or a formal Motion.

9. The significance of Wilson's prior judicial admission that she is not a party should not be overlooked: In *Marriage of Shapard, supra*, wife's attorney filed a notice of attorney lien and a Motion to withdraw. Only **after** he filed the Motion to Withdraw did he file a Motion to Intervene in the dissolution case. The appeals court held that, although intervention by third parties in dissolution cases usually is discouraged, the attorney was entitled to intervene in the dissolution case for the limited purpose of asserting and enforcing his lien. He would not have been permitted to assert and enforce his lien without leave to intervene. Here, Wilson is asserting claims for attorney fees, but unlike the attorney in *Shapard*, she has flouted the Rule.

In *Brown v. Superior Court*, 116 Cal. App. 4th 320 (Cal. App. 3d Dist. 2004), a California appeals court held that an attorney is not a party to the underlying action:

**Absent proper intervention, the fundamental rule is that the attorney is not a party to the client's action and cannot appear on his or her own behalf to seek any relief in that action . . . [O]ne who is not a party to a proceeding may not make a motion therein. It is a recognized rule of legal procedure that no one not a party to the action, without any disclosed interest in the result thereof, can be permitted to thrust himself into the controversy by filing any character of pleading therein.**

*Id.* at 329. [emphasis added]. *See also. Fossett v. Gray*, 173 S.W.3d 742, 754 (Tenn. Ct. App. 2004) ("An attorney is not a party to a case and cannot be awarded damages"); *Wilson v. Wilson*, 987 S.W.2d 555, 566 (Tenn. Ct. App. 1998) (attorney's fees awards should not be granted directly to a spouse's attorney insofar as the attorney is not a party to the divorce action)

10. Nevertheless, if Wilson truly believed that she was not a party and did not have faith in the Court's ability to handle father's complaints in an administrative capacity, her proper course of action would have been to file a Special Appearance objecting to this Court's jurisdiction over her as a party. By filing responses and Motions instead, Wilson

waived any objection she might have had. And because she thusly elected to participate as a party, intervention was mandatory.

**11.** The Court should also take **judicial notice** that, as of October 15, 2008, the Certificates-of-Service of Wilson’s filings—all of which were captioned “PETITIONER’S ATTORNEY-OF-RECORD, MADELINE WILSON”— reveal that not one was mailed to her putative client, Christy Ryan.<sup>8</sup> It wasn’t until January 7 of 2009 that Wilson filed a Motion to withdraw (granted 2/24/2009), which Motion alleged “*Petitioner has failed to keep in contact with counsel.*” In fact, Wilson was litigating without her client’s authorization or knowledge. *Cf. Williams v. Burns*, 463 F. Supp. 1278, 1285 (D. Colo. 1979) (“Clients are not insurers of actions taken by attorneys”). As such, Wilson was “Counsel-of-record” in title only, and should have sought leave to intervene like any other non-party.

**12.** The Rules of Professional Conduct contemplate a lawyer in one or more of three roles: (1) counselor; (2) advocate; or (3) officer-of-the-court. The Rules prohibit a lawyer from being a witness. R.P.C. 3.7. “Combining the roles of advocate and witness can prejudice the tribunal and the opposing party.” *Id.* at cmt. 1. Wilson knew this, as her communiqué to Randy Dement, another attorney, reveals:

Please . . . review . . . the Stipulation that is attached as to whether you think the no-contact Order is clear enough. Just look at clause 3.3 and let me know . . . Let me know if I am wasting my time on this or if I could be considered a “witness” in the matter, since it is MY no-contact order.

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<sup>8</sup> *See, e.g.*, (1) Huff’s 10/15/2008 ENTRY OF APPEARANCE, 11/20/2008 PETITIONER’S ATTORNEY-OF-RECORD, MADELINE WILSON’S, RESPONSE TO SEAN HARRINGTON’S MOTION FOR DECLARATORY JUDGMENT AND FOR CASE MANAGEMENT ORDER, (2) 12/08/2008 PETITIONER’S ATTORNEY-OF-RECORD, MADELINE WILSON’S, RESPONSE TO FATHER’S MOTION FOR SANCTIONS AGAINST ATTORNEY CFI MADELINE WILSON AND MOTION TO STRIKE, and (3) 12/19/2008 PETITIONER’S ATTORNEY-OF-RECORD, MADELINE WILSON’S, REPLY IN SUPPORT OF MOTION TO STRIKE.

And, although “A lawyer should use the law’s procedures only for legitimate purposes” (RPC preamble N<sup>o</sup> 5), Wilson knowingly leveraged her client’s case for personal avengement, as her e-mail to mother reveals:

I will not charge you for any aspect of the Contempt, if you give me permission to file it. Sean has really “asked for it” by involving my children. I need your permission to file this Motion for Contempt. It is my contention that since we signed that Stipulation, that I have had a no-contact Order against Sean. See 3.3 in the Stipulation. Anyway, I am ready to enforce it and have him jailed or fined or both . . . You would have to testify as to his contemptuous ways – I would prepare you, as usual . . . it will be as easy as pie . . . Don’t even hesitate in saying “no” if you don’t want any part of this.

This exemplifies why lawyers are prohibited from “acquiring any right which is genuinely disputed and likely to become the subject of litigation.” *People v. Mason*, 938 P.2d 133, 136 (Colo., 1997). “[O]therwise, there would be too much potential for abuse by the attorney who has substantial control over the [case].” *Id.*

**13.** As part of Wilson’s superfluous due process arguments, she urged that father’s request for a declaratory judgment “*would deny Wilson the ability to obtain a restraining order against the Respondent*” and therefore “*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 [father] is a fundamental right and due process requires that she be given the opportunity to so.*” Her argument perfectly illustrates the problem with her involvement in this case: The undersigned was never married to Madeline Wilson, has no children with Wilson, and this case is not about Madeline Wilson’s due process rights or her ability to protect herself from the undersigned. That’s what County Court is for (as Wilson should know, because she’s unsuccessfully applied for no less than five (5) permanent restraining orders against father in Jefferson and Denver Counties). This case *was* about a dissolution of marriage between the undersigned and Christy Ryan, and Wilson’s role was supposed to be counsel for Ryan, not a party litigant.

In *People v. Roose*, the supreme court’s pronouncement regarding another attorney is analogous, where she “suffer[ed] from an extreme lack of understanding of the adversarial process. The inability to understand key concepts of the attorney's role with

regard to the client and to the court system is fundamentally lacking . . . result[ing] in profound harm to . . . the system as a whole.” 44 P.3d 266, 272 (Colo. 2002).

14. Although the undersigned has researched and found the foregoing authorities, opposing counsel claims his “*exhaustive research to find cases that are factually similar,*” was unsuccessful. Instead, he proffered a string cite of four cases—discussed below, which offer little, if any, guidance—for his proposition that attorneys have due process rights to hearings, filing of responsive briefs, and retaining defense counsel.” 11/07/2009 Brief at 4.

The first of these is *Brown v. Silvern*, 141 P.3d 871 (Colo. 2005). In *Brown*, the defendant-attorney, Steven Silvern, filed a Motion for sanctions against plaintiff’s attorneys, John L. Springer and Darin L. Schanker. Because the *Brown v. Silvern* published decision contains neither holdings nor dicta relevant to the issue at bar, the undersigned conferred on November 9<sup>th</sup> 2009 with Mr. Springer, who represented both Springer and Schanker on appeal. Springer recalled that the trial court handled Silvern’s Motion for sanctions under the court’s inherent powers and that neither he nor Schanker became parties to the case or asserted any personal interests. Schanker corroborated this in a November 9, 2009 e-mail to father, writing, “*Judge vacated hearing bf we had a chance. Case went back down to trial ct level, hearing was held, and all issues were dismissed. We never fought the issue that we were not proper parties.*” Unlike Wilson, neither Springer nor Schanker retained outside counsel. They also did not withdraw, file a Special Appearance, file a Motion to Intervene or, in fact, file *anything* in response to Silvern’s Motion for sanctions. Thus, because the issue of intervention was not litigated, *Brown* does not support Wilson’s proposition that intervention isn’t required.

However, of interesting note is that the *Brown* panel did hold:

[Appellant] contends that the trial court erred by denying his request for sanctions under C.R.C.P. 11 and § 13-17-102. . . . We agree with [Appellant] that he is entitled to a hearing on his claim for sanctions under C.R.C.P. 11 and § 13-17-102 . . . the trial court should have conducted a hearing before ruling on the motion. Accordingly, remand is required.

*Id.* at 875. In the case at bar, the Court also ruled on father's Motion for sanctions against Wilson without holding a hearing or discussing any of the evidence father proffered.

In *Eisenberg v. University of New Mexico*, 936 F.2d 1131 (10<sup>th</sup> Cir. 1991), the court *sua sponte* ordered an attorney appearing before it to show cause why she should not be sanctioned under Fed.R.Civ.P. Rule 11 for failure to conduct an adequate inquiry into the truth and accuracy of a statement regarding the judge's law clerk that she included in a Motion. Because she was not proceeding as a party to the case (defending against or seeking relief from opposing party) there was no need for her to intervene. She did not retain outside counsel, but did respond in writing on her own behalf to the court's show cause order, which was entirely appropriate, because her interaction with the Court was under its supervisory capacity (*i.e.*, the issue was between the attorney and the court).

In *Bralely v. Campbell*, 832 F.2d 1504 (10<sup>th</sup> Cir. 1987), the Tenth Circuit, *en banc*, issued sanctions against an attorney for his inept briefs to the panel, and on rehearing, and his purported citations of supplemental authority. Like *Eisenberg*, the court remonstrated the attorney in its supervisory capacity (*i.e.*, the issue was between the attorney and the court). The attorney was not personally embroiled in the case, was not acting on his own behalf at any time in the trial court or appellate proceedings, and, for these reasons, no intervention was required. Although he could have retained counsel, had he been afforded a hearing, he did not.

Finally, in *Roadway Express v. Piper*, 447 U.S. 752 (1980), the U.S. Supreme Court held that, in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel.

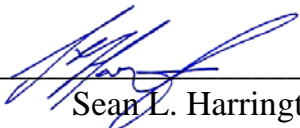
**15.** All four of the cases cited by Wilson support father's argument that his objections and complaints regarding Wilson's unethical conduct and meddling in this case **should have been handled by the Court in its administrative capacity**. The Court should have held a hearing on those issues and should not have granted Wilson *carte blanche* as a party litigant. See *Crawford v. McLaughlin*, 473 P.2d 725, 728 (Colo. 1970) (It is the duty of courts to preserve the integrity of the proceedings by insulating the original parties from nonparty intervenors); *In re Estate of Myers*, 130 P.3d 1023, 1025 (Colo. 2006) ("A number of attorney ethical proscriptions, especially those barring . . . acting in conflicting roles . . . have developed precisely to ensure fairness and . . . protect the

integrity of the process”); *U.S. v. Locascio*, 6 F.3d 924, 934 (2d Cir. 1993) (“we are also conscious of the institutional interest in protecting the integrity of the judicial process. If an attorney will not perform his ethical duty [to avoid being both lawyer and witness], it is up to the courts to perform it for him”).

**16.** Finally, as a threshold matter, the Court should abstain from issuing a ruling on the matter of intervention, because father has raised that issue on appeal, now pending. *See Anstine v. Churchman*, 74 P.3d 451, 452 (Colo. App. 2003) (“[g]enerally, once an appeal is taken, a trial court is divested of jurisdiction to determine substantive matters that directly affect the judgment being appealed unless the appellate court has issued a remand order”).

WHEREFORE, for the foregoing reasons and based on the foregoing authorities, the trial court, when revested with jurisdiction from the appeals court, should find that Wilson was not properly before the Court and bar Wilson’s claims or defenses as procedurally defective, and grant father summary judgment against Wilson based on the undisputed facts of the record.

Dated this 9<sup>th</sup> day of November, 2009.

  
Sean L. Harrington

## CERTIFICATE OF MAILING

I hereby certify that on the 9<sup>th</sup> day of November, 2009, a true and accurate copy of the foregoing *BRIEF IN OPPOSITION* has been mailed, first class postage prepaid, to the following:

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

by electronic mail to: David H. Yun ([DYun@jalegal.com](mailto:DYun@jalegal.com)) and  
Brett N. Huff ([bhuff@huffandleslie.com](mailto:bhuff@huffandleslie.com)).

Petitioner, Christy C. Ryan, has requested not to be served with filings unless they appear to affect her interests. At her request, the undersigned has not served her with a copy of this brief.



<b>2000</b>	
Feb. 17 <sup>th</sup>	Wilson applied for permanent restraining order (JeffCo No. 2000C02389), which was denied on the merits 3/02/2000
Mar. 7 <sup>th</sup>	Wilson filed Motion captioned, "PETITIONER'S MOTION FOR LIMITED CONTACT BETWEEN HER COUNSEL AND RESPONDENT" (not copied on father, in violation of C.R.C.P. Rule 5)
July 6 <sup>th</sup>	Wilson applied for permanent restraining order (JeffCo No. 2000C08748), which she intended to serve father with after he was civilly committed, so that he couldn't appear to defend himself
July 7 <sup>th</sup>	Wilson and mother together consulted with ass't Jeffco district attorney John Thirkell for a civil commitment of father (Case No. 00MH243) <sup>1</sup>
July 14 <sup>th</sup>	Wilson requested duty-to-warn from mental hospital for: (1) herself; (2) mother; and (3) presiding judge of No. 99DR3717 (Jane A. Tidball)
July 17 <sup>th</sup>	Wilson sent fax to treatment team at mental hospital where father was committed on the petition of mother. <sup>2</sup>
July 26 <sup>th</sup>	Both mother and Wilson, as complainants (not attorney & client), traveled to mental hospital to meet with state's psychiatrist to express their concerns
Aug. 3 <sup>rd</sup>	Wilson contacted Laura Arcilise (Division 3 clerk), to inform that she had requested Judge presiding in 99DR3717 (Jane A. Tidball) be included in her duty-to-warn.
Aug 14 <sup>th</sup>	Wilson's restraining order from Jefferson County Court N <sup>o</sup> 00C08748 was incorporated into the dissolution case, 99DR3717
<b>2001</b>	
Nov. 6 <sup>th</sup>	Wilson became a party to 11/06/2001 stipulated/ordered agreement (see §§ 3.3, 5.1 – 5.3)
<b>2005</b>	
Mar. 7 <sup>th</sup>	Wilson advised mother to get restraining order in Texas, preventing Texas schools from releasing records to father
Jun. 6 <sup>th</sup>	Wilson advised mother (in Texas) to listen in phone calls between father and daughter and get restraining order in Texas
July 19 <sup>th</sup>	Wilson started a "prayer chain" for the minor child
July 26 <sup>th</sup>	Wilson consulted with Randy Dement, esq., about filing her own contempt Motion in 99DR3717; then e-mailed mother for permission to file it, explaining, " <i>Sean has really 'asked for it' by involving my children.</i> "
July 27 <sup>th</sup>	Wilson explains her objective: " <i>I would like to see him go into lock-down for 180 days. I think Jane Tidball would do it.</i> "
<b>2006</b>	
Apr. 3 <sup>rd</sup>	Wilson asks mother to review and approve of Wilson's response to State Bar of Texas
Apr. 25 <sup>th</sup>	Wilson asks Randy Dement & Brett Huff to review and approve of Wilson's response to State Bar of Texas
May 26 <sup>th</sup>	Wilson e-mails mother " <i>I don't think he's ever going to see Shelby again anyway, at least until she is grown. He is too busy fighting and not taking his meds</i> "

June 8 <sup>th</sup>	Wilson e-mailed mother, “ <i>stop praying for him because that keeps you connected to him and that's not good . . . I have released him to the Universe and hope you will too. Seriously, light candles, burn some incense and send his spirit away and do not speak of him any more.</i> ”
<b>2007</b>	Wilson contacted brother of father's attorney in Texas out of “ <i>concern for the O'Brien family.</i> ”
May 1 <sup>st</sup>	Wilson files contempt Motion in 99DR3717 in mother's name, but solely to assert Wilson's interests
<b>2008</b>	
Oct. 15 <sup>th</sup>	Wilson retained counsel to enter an appearance in the instant case (unprecedented)
Nov 20 <sup>th</sup>	Wilson (not mother) filed in 99DR3717 an answer to father's Motion (filed 42 days earlier) without leave of the court, but did <b>not</b> request attorney fees. She argued on behalf of former special advocate, Bill J. Fyfe
Dec. 8 <sup>th</sup>	Wilson (not mother) filed a Motion to Strike in 99DR3717 and sought attorney fees for outside counsel
<b>2009</b>	
Apr. 9 <sup>th</sup>	Wilson (not mother) filed a response to a Motion for Substitution of Judge and sought attorney fees for outside counsel

<sup>1</sup> Mother worked for county mental health provider, Jefferson Center for Mental Health, and mother's direct supervisor, Tom Olbrich, handled the civil commitment arrangements.

<sup>2</sup> The following is an excerpt from Wilson's 7/17/2000 fax to the Colorado Mental Health Institute at Fort Logan: “*I am very concerned about my safety and Christy's safety and request as much advance warning as possible of ANY possible release of Sean Lee Harrington. Please contact me on my cell phone. We oppose any work-release program due to safety concerns . . . We further request an administrative review prior to ANY discharge/release. We also request a review by your safety committee . . . We desire notice of these reviews and desire to attend such reviews.*”