

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
FAMILY COURT DIVISION
CASE TYPE: 04: DISSOLUTION WITH
CHILDREN

In Re the Marriage of:

Court File No. 62-FX-00-152

STEPHANIE KAE HARNOIS,

Petitioner,
and

NOTICE OF MOTION AND
MOTION FOR SANCTIONS

JOHN EDWARD FULLERTON,

Respondent.

TO: RESPONDENT JOHN EDWARD FULLERTON AND HIS ATTORNEY, JOEL M. ANDERSON,
JOEL M. ANDERSON & ASSOCIATES, 2150 3RD ST, WHITE BEAR LAKE, MINNESOTA
55110

NOTICE OF MOTION

PLEASE TAKE NOTICE that a hearing will be held on _____, at
_____, before the Honorable _____, at the Ramsey County Government
Center, 15 Kellogg Blvd W, St. Paul, Minnesota 55102. At that hearing, Petitioner will make
the following:

MOTION

1. Sanctioning Joel M. Anderson, attorney for Respondent, pursuant to Minn. Stat. §
549.211, for his false assertion in a letter to the Court dated 20 August 2008
that Petitioner was at fault for failing to answer Respondent's Request for
Admissions, when Respondent's request was barred by the Rules of Civil
Procedure.

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2. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for his false assertion in a letter to the Court dated 19 November 2008, that the undersigned had defamed Jean Kubitschek.
3. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for his false assertion in the same letter that he was not familiar with the Walter Thayer matter.
4. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for his improper submission to the Court of correspondence dated 26 January 2009, which falsely asserts that Petitioner has not provided income records.
5. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence dated 26 January 2009 which falsely asserts that the undersigned is not the attorney of record in the expedited process matter.
6. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence dated 26 January 2009 which falsely asserts that child support modifications based on a change in parenting time must be preceded by a change in physical custody designation;
7. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence dated 26 January 2009 which falsely asserts that modified motions must be served before the parties can enter into stipulations with regard to child support, as Respondent admits counsel were instructed to do by the Court.

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8. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence dated 26 January 2009 in which he falsely asserts that the undersigned published defamatory comments with regard to Jean Kubitschek.
9. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for his correspondence to the Court dated 5 February 2009, in which he falsely asserts that the stipulation into which the parties entered on 7 June 2007 required agreement between the custody evaluator and guardian ad litem.
10. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence to the Court dated 5 February 2009, in which he falsely asserts that Erienne's "educational outline" is not being facilitated and that it does not meet with the approval of the White Bear Lake school district.
11. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same correspondence to the Court dated 5 February 2009, in which he falsely asserts that "the children are more endangered while parented in Duluth than [Respondent] endangered them in White Bear Lake."
12. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for his "Respondent's Memorandum Supporting Discharge of Petitioner's Substituted Attorney," in which he falsely states Petitioner testified that "Petitioner asserts her sexually abused daughter would have been better off not reporting the abuse." (p. 2)

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13. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely states that Jean Kubitschek was appointed to address “visitation inconvenience.”
14. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely infers that Respondent's failure to have the children in therapy was due to cost.
15. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely states that Respondent only received \$300 per month in child support from Petitioner's unemployment compensation.
16. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely states that Petitioner voluntarily left her employment.
17. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely states that Petitioner failed to comply with lawful discovery requests.
18. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he makes arguments which are not supported by current law and makes no reasonable argument for change of current law.
19. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same memorandum, in which he falsely asserts that the Court “found the children of suitable age and discretion to testify two years ago.”

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20. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the “Respondent's Affidavit in Opposition to Petitioner's Attorney's Conflict of Interest,” which makes false assertions in paragraphs 11, 13, 14, 15, 16 and 25 regarding statements made by Haleigh Fullerton.
21. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same affidavit, which makes false assertions in paragraph 17 regarding an incident with Respondent.
22. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same affidavit, which falsely asserts in paragraph 19 that Erienne Fullerton was compelled to read the report of the Guardian ad Litem.
23. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same affidavit, which makes false assertions in paragraphs 20 regarding Petitioner's attorney.
24. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same affidavit, which makes false assertions in paragraphs 21 regarding the reasons for the withdrawal of Jean Kubitschek.
25. Sanctioning Mr. Anderson, pursuant to Minn. Stat. § 549.211, for the same affidavit, which makes false assertions in paragraphs 21 regarding Respondent's payment of Jean Kubitschek.
26. Ordering Mr. Anderson to pay Petitioner's reasonable attorney's fees and costs incurred as a result of his conduct, pursuant to Minn. Stat. § 549.211 subd. 5(a).
27. For such other and further relief as to the Court is just in the circumstances.

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All responsive pleadings shall be served on Petitioner's attorney, and mailed to or filed with the Court no later than five (5) days prior to the scheduled hearing. In ruling on this motion, the Court may, in its discretion, disregard any responsive pleadings served or filed less than five (5) days prior to the hearing.

This motion is based upon the attached affidavits and/or pleadings.

THE COURT MAY GRANT ANY OR ALL OF THE ABOVE RELIEF EVEN IF YOU ARE NOT PRESENT.

LAW OFFICES OF MICHAEL D HARNOIS PLC

Dated: _____
Michael D Harnois (MN# 343067)
415 N 22nd Ave W
PO Box 16985
Duluth Minnesota 55816-0985
Telephone: (218) 260-2392
Facsimile: (866) 422-1723
ATTORNEY FOR PETITIONER

ACKNOWLEDGEMENT

The undersigned acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded under Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

Michael D. Harnois

DISTRICT COURT
SECOND JUDICIAL DISTRICT
FAMILY COURT DIVISION
CASE TYPE: 04: DISSOLUTION WITH
CHILDREN

Court File No. 62-FX-00-152

AFFIDAVIT OF MICHAEL D. HARNOIS

Respondent.

)ss.

1. In a letter to Magistrate Colia Ceisel dated 20 August 2008, Mr. Anderson states that “Petitioner has ... refused to timely respond to Respondent’s Request for Admissions ... which dispositively implies that Petitioner has no diminution of income.” See Exhibit A. Mr. Anderson should have known that his Request for Admissions was barred by Minn. R. Civ. P. 361.03. His assertion is not supported by existing law and is made solely to harass and delay.
2. Your affiant has made no public claims regarding Ms. Kubitschek that were not factual. See attached Affidavit of Stephanie Kae Harnois. Mr. Anderson’s assertion neither has nor is likely to have evidentiary support, is not supported by existing law, and is presented solely to harass and delay and increase the cost of the proceedings.

3. The letter of 26 January 2009 referred to in paragraphs 3-8 is attached as Exhibit B.

The record in the Thayer matter, F2-05-301484, shows that Mr. Anderson was present at a hearing on that matter on 15 December 2005 and that he generated correspondence to your affiant regarding the same matter on 1 February 2006. See Exhibits C and D. Mr. Anderson's protest of feigned ignorance neither has nor is likely to have evidentiary support.

4. Petitioner had in fact transmitted current income records to Respondent by fax on 7 January 2009. See Exhibit E. On 2 February 2009 your affiant provided Mr. Anderson with a copy of the 7 January fax along with the confirmation page. See Exhibit F. Mr. Anderson's assertion neither has nor is likely to have evidentiary support and is presented solely to harass and delay and increase the cost of the proceedings.

5. The record shows that your affiant filed a Certificate of Representation with the Court in the expedited process matter on 25 June 2008 and subsequently Mr. Anderson and your affiant appeared at a child support hearing. See Exhibit G. Mr. Anderson's assertion neither has nor is likely to have evidentiary support and is presented solely to harass and delay and increase the cost of the proceedings.

6. Mr. Anderson should have known that child support in Minnesota is determined by parenting time, not the physical custody label. His argument is frivolous and not supported by existing law and presented solely to harass and delay and increase the cost of the proceedings.

7. The parties through counsel were free to enter into any stipulation for amounts consistent with the guidelines and present them to the Court for approval. Counsel's assertion that modified motions were required is both disingenuous and presented

solely to harass and delay so that his client would continue to receive child support, even when both children were living with Petitioner.

8. See paragraph 2, *supra*.
9. Upon information and belief, there is no stipulation entered in the record which contains a provision requiring the custody evaluator and guardian ad litem to agree. See Exhibits H and I. Mr. Anderson's assertion to the contrary is made solely to harass and delay and increase the cost of the proceedings.
10. Mr. Anderson's assertion that "Erienne's proposed educational outline is allegedly not being facilitated" neither has nor is likely to have evidentiary support and Mr. Anderson has not made a reasonable inquiry as to its truth or falsehood. Further, with regard to his assertion about the "overwhelming testimony" of White Bear Lake school officials, the educational plan which is in place was officially approved by the White Bear Lake school district. See Exhibits H, I, J and K. Erienne was praised for being a "pioneer" in the use of the new online learning tool. Mr. Anderson's proffered parol evidence does not lend evidentiary support to his assertion.
11. Mr. Anderson's assertion that the children are endangered with Petitioner neither has nor is likely to have evidentiary support, is not supported by existing law, and is presented solely to harass and delay and increase the cost of the proceedings. See Exhibits H and I. In an unreported decision filed on 28 August 2007, the Court of Appeals upheld the district court's award of conduct-based fees in the amount of \$20,334.53 when "'appellant unnecessarily added to the length and cost of th[e] proceeding[s]' by continuing with his motion to modify custody 'despite the professional opinions of 3 court appointed professionals that were directly contrary to

his motion.” *Pihlman v. Pihlman*, No. A06-1391 (Minn. App. 2007). See Exhibit L. In the instant matter, the custody evaluator and guardian ad litem both recommended that Haleigh Fullerton be placed with Petitioner. The record shows that the custody evaluator and guardian ad litem were deeply ambivalent with regard to Erienne but eventually agreed to allow her to stay in White Bear Lake provided that both Respondent and Erienne fulfilled certain expectations. See Exhibits M and N; custody evaluator report of 22 August 2008; GAL report of 29 October 2008. On 29 December 2008 the guardian ad litem submitted a report to the Court reporting that those expectations had not been met and requested that the Court order an immediate change of custody. On 26 January 2009, the Court found that the welfare of Erienne Fullerton was in immediate danger and granted sole physical custody to Petitioner. In less than six weeks Petitioner has dealt with all of the concerns which occasioned the guardian ad litem’s 29 December report. Respondent could not accomplish those tasks in the entire fall semester, and in the matter of Erienne’s psychotherapy and her contact with Walter Thayer, something Respondent has been ordered for three years to do and failed. Erienne is enrolled in all of the classes she needs to graduate, her work is being done and her progress is satisfactory. See Exhibit O. She has applied to two colleges, been accepted at one, and registered for the ACT. She has had five sessions of psychotherapy. Petitioner has installed software which prevents Walter Thayer from communicating with Erienne by instant message.

12. In his exhibits to his memorandum, Mr. Anderson intentionally omitted a page from Petitioner's deposition which would have proven his assertion here to be false. See Exhibit P.

13. There is no suggestion in the record anywhere that Ms. Kubitschek was appointed to address “visitation inconvenience” and Mr. Anderson knows this statement is entirely false. Ms. Kubitschek was appointed in response to the allegations in Petitioner's Motion for Contempt. The record shows that Referee Williams referred to them as very serious allegations.
14. Mr. Anderson failed to made any reasonable inquiry into the truth of this assertion. Respondent has been aware since _____ that the cost of the children's therapy was covered by the Crime Victims Compensation Fund. See Exhibit Q.
15. Mr. Anderson failed to made any reasonable inquiry into the truth of this assertion. Respondent received \$349 per week from Petitioner's unemployment, not \$300 per month. See Exhibit R.
16. Mr. Anderson's assertion that Petitioner voluntarily left her employment is simply fabricated of whole cloth and is made with no inquiry whatsoever into the facts.
17. Mr. Anderson has been, for months, unable to comprehend the evidentiary rules of the expedited process. He has received all of the information to which he is entitled under the rules. Petitioner is not obligated to respond to baseless allegations made with no evidentiary support. See Exhibit S. See also ¶1.
18. As was evidenced in the hearing on 13 March, as well as in his memorandum, Mr. Anderson was unfamiliar with every point of law relevant to the issues presented.
19. The Court interviewed the children *in camera* during the last proceedings. There was no finding regarding their testimonial capacity.
20. Petitioner did not believe Haleigh Fullerton had made the statements attributed to her in the affidavit. Haleigh's therapist was consulted and advised Petitioner should

ask Haleigh directly whether she had made those statements. Haleigh was given the affidavit to read and denied making the statements therein. Haleigh has so advised the Guardian ad Litem.

21. Petitioner will testify that Mr. Fullerton was told repeatedly by telephone not to come to her residence on that day; that he did so anyway; that he made repeated attempts to trespass by entering the premises through a locked gate; and that when he failed to gain entrance, he stood in the alley immediately outside of the front porch window and began shouting into the house. Upon information and belief, when Mr. Anderson discussed this incident with Ms. Kubitschek, she told him that Mr. Fullerton should not have been there.
22. Petitioner will testify that she had become aware that Mr. Fullerton was giving Erienne false information as to why the Court had ordered her to move to Duluth. Erienne had made several phone calls to the Guardian ad Litem which made it clear she did not have accurate information. Petitioner inquired of the Guardian ad Litem as to whether she could allow Erienne to read his report, so that she would understand his reasons for requesting Petitioner be given immediate custody of Erienne. The Guardian ad Litem agreed that this would be an appropriate course of action.
23. Your affiant has never filed a complaint with the Office of Lawyers Professional Responsibility against Mr. Anderson. Petitioner herself has filed two complaints against Mr. Anderson. One of those complaints is still being investigated. In the other, the Director found that, while Mr. Anderson had behaved in an entirely inappropriate manner that might expose him to civil liability, he had not clearly violated a rule of

professional conduct. See Exhibit T. The record shows that, while Mr. Anderson has generated inappropriate correspondence to the court by the ream, your affiant has only written to the Court when necessary to correct false statements made by Mr. Anderson in inappropriate correspondence.

24. Respondent's own exhibits to the affidavit (email from Karl Ranum to Jean Kubitschek) demonstrate that Ms. Kubitschek withdrew following accusations of professional misconduct.
25. Respondent's own exhibits to the affidavit (letter from Jean K. Kubitschek dated 19 February 2009) demonstrate that Mr. Fullerton has not paid for prospective work by Ms. Kubitschek. Upon information and belief, Respondent had refused to pay Ms. Kubitschek fees already owed, because she ordered Haleigh live in Duluth.
26. It is difficult to know what sanctions would suffice to modify Mr. Anderson's behavior. In 2002, Mr. Anderson was involved in a matter in which his opponent was awarded \$75,000 in conduct-based fees because, as the Court of Appeals found, he "'contributed unnecessarily and significantly to the length and expense of this proceeding' by filing numerous, repetitive, and unfounded motions for relief" and "the district court noted that it has had no other family law matter before it that has required such significant court involvement and in this case, it is due to [appellant's] conduct." *Anderson v. Anderson*, 2002 MN 950 (Minn. App. 2002, review denied, 2002 MN 1493). Yet, throughout the pendency of this matter, he has exhibited precisely the same conduct.

FURTHER YOUR AFFIANT SAYETH NOT.

Subscribed and sworn to before me this Michael D. Harnois

____ day of _____, 200__.

Notary Public