DRAFT

RE: HARMON WILFRED - June 8, 2000 - 3:30 p.m.

PLAYERS

(1) Bob Harward - Deputy District Attorney, El Paso County
(2) Larry Bowling - Deputy District Attorney, Arapaho County
(3) Richard Tegtmeier - A's Federal Attorney
(4) Patrick Mika - A's State criminal Attorney
(5) Rick Lohman - A's family Attorney
(6) Dale Parrish - A's former criminal lawyer

CHRONOLOGY

April 3, 2000

-A waived extradition appeal hearing and submitted to extradition
-detained in Waterloo detention centre

April 5, 2000

-A picked up by U.S Federal Marshall at the Waterloo Detention Centre along with a Colorado Springs Police Detective (Peyton Patterson) and transported to the El Paso County jail
-the original deal between DP and BH was that once in the U.S., the A could leave, go to court, be bonded out, attend the preliminary hearing, and then leave
-the arrangement was that he wasn't supposed to be arrested or detained
-while on the plane, PP told the A that once down there, he they were going to "get him" on other charges
-A showed him ADG's letter and a copy of the Treaty and he made phone calls at the Colorado airport and confirmed that they couldn't arrest him on anything other than what he was being extradited on; they therefore put him in jail on the extradition matters

April 6, 2000

-A was brought before a Judge, presented a bond of $10,000 on the condition that the A pay all the extradition costs for returning the A to the US
-BH said to DP that there was going to be no bond unless he paid the extradition costs of him coming to the US from Canada
-the A had to agree to this in order to get out of jail and that he would return on May 11th to address the extradition matters

April 7, 2000

-A left Colorado, flew to Ohio to visit with his parents, and then drove to Stratford
-they left on the agreement that he would return on May 11, 2000 for the purposes of a motion for dismissal on the extradition matters

April 11, 2000

-the A returned to Canada

May 7, 2000

-the A drove to Ohio to see his parents

May 10, 2000

-the A flew to Colorado

May 11, 2000

-attended the criminal hearing that addressed the extradition matters
-prior to the hearing, the A was arrested
-the A's lawyer at the time was Patrick Mika
-the 2 Federal Marshalls wouldn't reveal what the charges were
-the A was told that the charges were sealed
-this was prior to the hearing
-the A was driven to Denver where he was paraded before a Federal Magistrate where the charges and the arrest warrant was unsealed and the charges were: non payment of child support over the past 2 years from the Arapahoe County case involving the A's first wife, Sandra
-note: when first released on the Extradition matters, Immigration made the A sign documentation that he wasn't allowed to work in Canada, so how could he pay child support
-note: these files were open and active with motions being filed, etc at the time of the A's arrest (Dale Parrish was the A's family lawyer at this time)

-the Federal Magistrate set a $150,000 cash bond for the A's release
-the A couldn't make this bond, as it was impossible i.e. it was too high
-he was therefore detained and taken to the federal detention centre in Liddleton, Colorado

note: during the hearing, T made the Judge aware that in detaining and arresting the A, the U.S. authorities were in violation of the U.S. Canada Treaty; the J chose to ignore this

May 16, 2000

-motion for dismissal was filed for violation of the treaty
-RT was the A's lawyer

May 23, 2000

-a preliminary hearing was held before a Federal Magistrate on the federal charges of the back child support issue
-a motion for dismissal was presented and multiple objections were presented on the basis of the Treaty violation and the courts jurisdiciton
-the motion was denied
-the case was put over for presentation and Indictment before a grand jury for June 12th

May 26, 2000

-the Federal District Attorney did some investigations with the Justice Department and discovered that there was, in fact, a violation of the Treaty
-the Federal case was dismissed by a Federal Prosecutor on the grounds of violation of the U.S. Canada Treaty
-the case was ordered sealed by a Federal Judge

-the A was released from the Federal Detention Centre (in Liddleton), and prior to leaving the jail, he was arrested by 2 Federal Marshalls, and then taken to the Denver jail for 4 days
-the A wasn't told why he was being arrested, wasn't read his rights to counsel, wasn't told anything
(See COMPUTER PRINT OUT)

Denver City Jail
-was put on 23 hour daily lockdown
-6 foot by 7 foot cell
-was with another inmate
-was only brought out for meals
-was given no clean clothes, [redacted] no toothbrush, no comb
-the A was filthy
-the A was only given a blanket and a floor mat on a concrete
-the A was harassed during the nights
-the guards were constantly trying to provoke a fight with the A
-one time, 6 officers surrounded the A while he was standing [redacted] cursing [redacted]
-the excuse that the A was given for them waking him up in the middle of the night was fingerprinting
[redacted] the A was pulled out of his cell and put into a holding cell, standing room only
-the A watched people being beaten up by the guards

told to stand and wait fingerprints ... designed to

May 30, 2000

-transferred to Arapahoe County jail
-taken into custody, fingerprinted, photographed and put into a holding cell

~4:30-5:00 p.m., the A was taken before Her Magistrate Schwartz without the A's knowledge of the release hearing
-RT was advised that the hearing was to take place the following morning at 9:00 a.m.
-upon the A's objection to proceeding without his lawyer, the A was told by the Magistrate that he would be representing himself that day, otherwise he would be taken back to jail
-during this hearing, LB presented a dissertation to the Judge on the treaty violation as related to the Federal charges (child support) that were dismissed and wrt the Arapahoe warrant that was put on hold (recall: there was an outstanding warrant issued in September, 1997 for failure to appear and contempt of court in relation to Sandra, the A's first wife)
-LB agreed and advised the court that they had no right to detain the A
-nonetheless, the A was forced to agree to a $750,000 U.S. non deposit (personal recognizance) bond with the condition that he return on June 29th for purposes of a Rule 69 hearing, which is a financial examinations hearing (the A isn't exactly sure what this is)
-this bond gave the A the right to leave the US and return to Canada
(See APPEARANCE BOND)

note: the A thinks that this was the best they could come up with - bec the Fed District Attorney's knew they were in violation of the Treaty, they wanted to still have a hold over him, and this was the way to do it

June 29, 2000

-the A is to attend for a financial examinations hearing in Arapahoe County

June 30, 2000

-a preliminary hearing is scheduled on the extradition matters that was supposed to occur on May 11th

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO
CASE NO. 89DR000477 COURTROOM/DIVISION 2 IV-D CASE

NOTICE OF HEARING 03-913746-44-6A

THE PEOPLE OF THE STATE OF COLORADO IN THE INTEREST OF:

SANDRA A. WILFRED NKA SANDRA A. ALLEN, PETITIONER/OBLIGEE,

VS.

HARMON L. WILFRED, RESPONDENT/OBLIGOR.

You are notified that a hearing has been set for the following issues:

RULE 69, CRCP

DATE: 06/29/2000

TIME: 3:00 ~~A.M.~~ (P.M.)

COURTROOM/DIVISION: M

LOCATION: ARAPAHOE COUNTY DISTRICT COURT
7325 S. POTOMAC ST.
ENGLEWOOD, CO 80112

IF YOU FAIL TO APPEAR, A DEFAULT JUDGMENT MAY BE ENTERED AND/OR A WARRANT MAY ISSUE FOR THE ARREST OF OBLIGOR HARMON L. WILFRED IF HE FAILS TO APPEAR

CLERK OF THE COURT

By: ____________________
Deputy Clerk

OR

By: Lawrence R Bowling
Attorney for the ARAPAHOE County Delegate CSE Unit
Reg. # 23114
7305 S. POTOMAC ST.
SUITE 100
ENGLEWOOD, CO 80112-4031
(720) 895-8700

Received June 28, 00 AW CRP

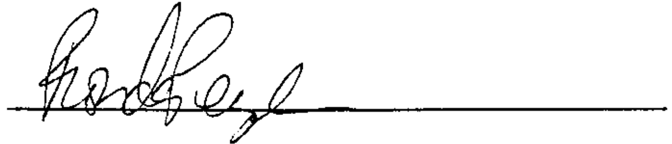
CSE803 (6/98)

034133

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing Notice of Hearing was placed in the United States Mail, postage pre-paid, on June 20, 2000, to the following:

HARMON LYNN WILFRED
215 DOUGLAS ST STRATFORD
ONTARIO CANADA N5A598
, CANADA



DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. 89DR477 Division M

MOTION TO INVALIDATE AND RESCIND $750,000 PERSONAL RECOGNIZANCE BOND

In Re the Marriage of:

SANDRA WILFRED, Petitioner

and

HARMON WILFRED, Respondent.

COMES NOW the respondent, Harmon Wilfred, and moves this Court to issue its order invalidating and rescinding the $750,000 personal recognizance bond, and as grounds states:

Statement of Facts

1. On April 5, 2000, Canada extradited the respondent in this case, Harmon L. Wilfred, to the United States pursuant to the Treaty on Extradition, United States and Canada, 1976, 27 U.S.T. 983, T.I.A.S. No. 8237 (hereafter "the Treaty"), for the sole purpose of trial of the criminal charges pending against him in El Paso County, Colorado in connection with his alleged abduction to Canada of two of his own children.

2. The following day the El Paso County court before which those charges were pending released him on a $10,000 cash bond, and permitted him to return to Canada on the condition that he return to El Paso County to attend a May 11, 2000, hearing in his case.

3. In compliance with the terms of his bond and the order of the court, Mr. Wilfred returned to El Paso County on May 10, 2000, to attend the hearing in his case.

4. The following day, he attended the hearing, and was unlawfully arrested by United States Marshals, in violation of Article 12 of the Treaty (the Specialty or Speciality provision), on parental non-support charges pursuant to a federal complaint that had been filed against him the previous day in Denver.

5. After Mr. Wilfred had been unlawfully detained on the federal charges for more than two weeks, the United States Attorney for the District of Colorado, realizing that Mr. Wilfred had been unlawfully detained in violation of the Treaty, requested that the federal complaint against Mr. Wilfred be dismissed and that Mr. Wilfred be released. The federal case against Mr. Wilfred was dismissed May 26, 2000.

6. On May 26, 2000, prior to Mr. Wilfred's actual release by the federal authorities, he was again unlawfully arrested by United States Marshals in violation of Article 12 of the Treaty, this time on the basis of state parental non-support charges that had pending against him in Arapahoe County since 1997, but with respect to which his extradition from Canada had neither been requested nor granted.

7. On May 30, 2000, after he had been unlawfully detained for four days on the Arapahoe County charges, Mr. Wilfred was compelled by the county magistrate before whom he appeared, in a proceeding in which he was not afforded the opportunity to be represented by counsel, to sign a $750,000 personal recognizance bond in order to secure his release from his unlawful detention. The terms of that bond require him to appear in Arapahoe County on June 29, 2000, for a financial asset examination.

8. Since his release from custody in Arapahoe County, Mr. Wilfred has returned to, and resides at, his home in Stratford, Ontario, Canada.

9. For the reasons set forth below, the personal recognizance bond imposed on Mr. Wilfred, as a condition of his release from his unlawful custody in Arapahoe County, was unlawfully imposed in violation of the Treaty, and must be invalidated and rescinded.

Standing

10. Although the Principle of Specialty is intended to protect the country that extradited a person against violation of the terms of that person's extradition by the country that obtained his extradition, the Supreme Court held more than 100 years ago that the primary means for enforcing this obligation with respect to persons extradited to the United States is by means of legal proceedings brought by the extradited person in federal or state court. *United States v. Rauscher*, 119 U.S. 407, 430-31 (1886). *See also United States v. Levy*, 905 F.2d 326, 328-29 (10th Cir. 1990); *United States v. Puentes*, 50 F.3d 1567, 1571-76 (11th Cir.), *cert. denied*, 516 U.S. 933 (1995). It further held that an extradited person may challenge an attempt to prosecute or detain him for an offense for which he was not extradited either by means of a pretrial motion or a petition for *habeas corpus* alleging that the court lacks jurisdiction over him because he is present in the United States only for the purpose of being prosecuted for the offense(s) for which he was extradited. *Id.* at 430-31; *Johnson v. Browne*, 205 U.S. 309 (1907); *United States v. Vreeken*, 803 F.2d 1085 (10th Cir. 1985), *cert. denied*, 479 U.S. 10815 (1987).

Applicable Law

11. Article 12 of the Treaty pursuant to which Mr. Wilfred was extradited provides:

(1) A person extradited under the present Treaty shall not be detained, tried, or punished in the territory of the requesting State[1] for an offense other than that for which extradition has been granted nor be extradited by the State to a third State unless:

(i) He has left the territory of the requesting State and voluntarily returned to it;

(ii) He has not left the territory of the requesting State within thirty days after being free to do so; or

(iii) The requested State has consented to his detention, trial, [or] punishment for an offense other than that for which his extradition was granted or to his extradition to a third State, provided that such other offense is covered by Article 2.[2]

(2) The foregoing shall not apply to offenses committed after the extradition.

12. This provision, commonly referred to as the "Principle" or "Rule" of "Specialty" or "Speciality", prohibits the country that obtains a person's extradition, and any political subdivision of that country, not only from prosecuting the extradited person for an offense he allegedly committed prior to his extradition, but also from depriving him of his liberty in any way with respect to such an offense.

13. In *Van Cauwenberghe v. Baird*, 486 U.S. 517 (1988), the Supreme Court considered the question of whether a person extradited to the United States could obtain interlocutory review of his claim that he was immune from civil process in connection with a civil law suit brought against him by a private party with respect to the same acts for which he was extradited. In unanimously deciding that the extradited person was not entitled to take an interlocutory appeal in such circumstances, the Court specifically avoided deciding whether the extradited person was immune from the service of civil process. However, in doing so, the Court unanimously held:

---

[1] The term "State" is used in the Treaty in the international context, and means "nation" or "country", not state or province of one of the parties.

[2] Article 2 of the Treaty, as amended by the Protocol Amending the Treaty, 1991, T.I.A.S. No. ________, defines the type of offenses for which extradition may be granted.

> [T]o the extent that the principal of specialty protects an extradited person from the exercise of coercive power by the receiving state on matters not anticipated by the extradition, the defense of a civil suit does not significantly restrict a defendant's liberty. Service of process merely requires that a defendant appear through an attorney and file an answer to the complaint to avoid default. *There is no possibility that the defendant will be subject to pretrial detention or be required to post bail. The defendant is not even compelled to be present at trial.* We therefore conclude that a right not to stand trail in a civil suit is not an essential aspect of a claim of immunity under the principle of specialty.

Id. at 526 [emphasis added].

14. In view of stated basis of the Supreme Court's opinion, there can be no doubt that if Van Cauwenberghe could have been subjected to pretrial detention or required to post bail in connection with the civil action brought against him, the Court would have held that such detention or bail violated the Specialty provision of the applicable extradition treaty. Indeed, the Supreme Court has long regarded subjecting a person to bond to guaranty his appearance in a judicial proceeding as a serious interference with his liberty "that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and friends" in the same manner as if he had been detained. *United States v. Marion*, 404 U.S. 307, 320 (1971). *See also, e.g., United States v. MacDonald*, U.S. 1, 7-8 (1982) and *Dilligham v. United States*, 423 U.S. 64, 65 (1975) (*per curiam*).

Conclusion

15. In view of the Supreme Court's unanimous opinion in *Van Cauwenberghe*, subjecting an extradited person to bail or a bond to guaranty his presence at a civil proceeding in the United States incontestably violates the Speciality provision of the United States extradition treaty with Canada.[3] Consequently, there can be no doubt that this Court must invalidate and rescind the personal recognizance bond Mr. Wilfred was compelled to sign in order to secure his release from his unlawful detention in Arapahoe County.

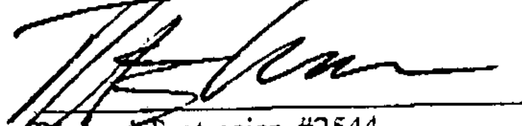
---

[3] The Supreme Court also held in Rauscher that 18 U.S.C. §3192 imposes an additional statutory Speciality obligation on the United States with respect to persons extradited to this country. *Rauscher*, 119 U.S. at 423-24. *See also* 4 M. Abbell & B.A. Ristau, INTERNATIONAL JUDICIAL ASSISTANCE: CRIMINAL (EXTRADITION), Sec. 13-4-2(3) (1997 ed.).

WHEREFORE, the respondent requests this Court issue its order invalidating and rescinding the $750,000 personal recognizance bond.

Respectfully submitted this 26th day of June, 2000.

TEGTMEIER LAW FIRM, P.C.

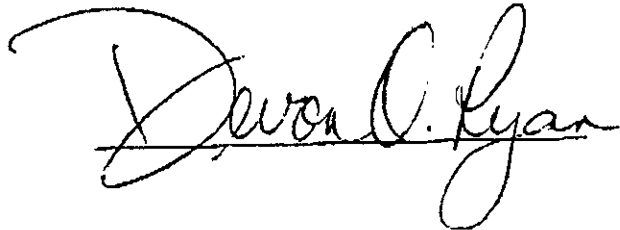


Richard Tegtmeier, #2544
518 North Nevada Ave., Suite 200
Colorado Springs, Colorado 80903
719/473-5757
719/473-6767 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2000, I served the above and foregoing by placing a true and complete copy in the U.S. mail, postage fully prepaid , addressed to the following:

Larry Bowling, DDA
Office of the District Attorney
7305 S. Potomac Street
Englewood, CO 80112



DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO
Case No. 89 DR 477 Division M

MOTION TO VACATE ORDERS RE: RULE 69 PROCEEDING

In Re the Marriage of:

SANDRA WILFRED, Petitioner

and

HARMON WILFRED, Respondent.

COMES NOW the Defendant, Harmon Wilfred (Mr. Wilfred), by and through The Tegtmeier Law Firm, P.C., his attorneys, and respectfully Moves this Court for an Order Vacating and Setting Aside the Magistrate's Ex Parte Orders of May 30, 2000, on grounds that said Orders violate the Doctrine of Specialty, and this Court therefore lacks personal jurisdiction over Mr. Wilfred, a resident of Canada. In support hereof, Mr. Wilfred avers and argues as follows:

I. Statement of Facts

1. Mr. Wilfred is a resident of Canada. He was present in the State of Colorado, United States, on April 7, 2000 for a hearing in the District Court of El Paso County in Case No. 98 CR 215 (Information attached hereto as Exhibit A; hereinafter "the custody and extortion case").

2. The *Warrant of Committal* entered June 1, 1998 by Judge C. Stephen Glithero of the Ontario Court of Justice (hereinafter "Extradition Order," attached hereto as Exhibit B) – issued under the terms of the *Treaty on Extradition Between Canada and the United States of America* (hereinafter "Treaty," attached hereto as Exhibit C) – authorized extradition of Mr. Wilfred only for the charges specified in the custody and extortion case. Exhibit B, page 1.

3. The District Court of El Paso County entered an Order on April 7 that allowed Mr. Wilfred to return to Canada and Ordered him to return for further proceedings in the custody and extortion case on May 11, 2000. Copy of Minute Order attached hereto as Exhibit D.

4. On May 10, 2000, in anticipation of Mr. Wilfred's presence in the State of Colorado for proceedings in the custody and extortion case, the United States filed a complaint alleging failure to pay child support. Copy of federal Complaint attached hereto as Exhibit E.

The United States arrested Mr. Wilfred on May 15, 2000 on these charges. Mr. Wilfred filed a Motion to Dismiss the complaint on grounds that it violated the Rule of Specialty, as specified hereinafter. The United States concurred, filed an independent Motion to Dismiss on grounds that the action violated the Rule of Specialty (Exhibit F, attached), and the United States District Court for the District of Colorado, Judge Walker Miller, ordered dismissal of the federal complaint on those grounds on May 26, 2000 (Exhibit G, attached).

5. On May 26, 2000, Arapahoe County arrested Mr. Wilfred under an outstanding warrant that also sought to enforce alleged child support and maintenance obligations – and that also violates the Rule of Specialty, for reasons specified hereinafter. On May 30, 2000 – in an ex parte proceeding in which Mr. Wilfred was not represented by counsel – the Arapahoe County District Attorney discharged the warrant, and the District Court of Arapahoe County ordered Mr. Wilfred to appear on June 29, 2000 for a financial asset examination pursuant to a three-year-old subpoena issued under C.R.C.P. Rule 69. The Court also required Mr. Wilfred to sign a $750,000 personal recognizance bond in order to be released from unlawful detention. These orders must be vacated under the Rule of Specialty.

6. The Extradition Order states that Mr. Wilfred had been apprehended under Canada's *Extradition Act* on the ground of his being accused in the State of Colorado of the crimes of "Criminal Extortion" and "Violation of Custody Order." As stated in the Information filed in the District Court of El Paso County in Case No. 98 CR 215 (attached hereto as Exhibit A), the charges covered by the Extradition Order are:

> <u>COUNT ONE: CRIMINAL EXTORTION (F-4)</u>
> Between November 22, 1997 and December 5, 1997, HARMON LYNN WILFRED did unlawfully, feloniously and without legal authority and with the intent to induce DEARNA WILFRED against her will to perform an act and to refrain from performing a lawful act, make a substantial threat to confine and restrain, DANIELLE MARIE WILFRED and ISAAC ARTHUR WILFRED, and HARMON LYNN WILFRED did threaten to cause the results by performing and causing an unlawful act to be performed; In violation of Colorado Revised Statutes 18-3-207(1), as amended, Criminal Extortion (F-4)
>
> <u>COUNT TWO: VIOLATION OF CUSTODY (F-5)</u>
> On or about October 15, 1997, HARMON LYNN WILFRED did unlawfully, knowingly and feloniously violate an order of a District Court and Juvenile Court of the State of Colorado, to-wit: Case No. 97DR3393, dated October 15, 1997 and October 20, 1997, granting the custody of DANIELLE MARIE WILFRED and ISAAC ARTHUR WILFRED, a child under the age of eighteen years to DEARNA WILFRED, with the intent to deprive the said lawful custodian of the custody of the child: In violation of Colorado Revised Statutes 18-3-304(2), as amended, Violation of Custody (F-5)

7. The facts and law on which the *Extradition Order* is based are specified in detail in the *Requesting State's Factum*, attached hereto as Exhibit H, at pages 1 through 5.

8. Based on a review of the law and facts presented, Judge C. Stephen Glithero of the Ontario Court of Justice ordered the committal of Mr. Wilfred for extradition to the United States because the alleged offenses, if committed in Canada, would have consisted of "Abduction in contravention of a custody order," "Abduction," and "Extortion." *See* Exhibit B, page 2; Exhibit H, page 27.

9. The facts alleged in the Information in Case No. 98 CR 215, District Court of El Paso County (Exhibit A) are not the allegations before this Court under C.R.C.P. Rule 69 and the child support and maintenance claims.

10. The statutes under which Case No. 98 CR 215, District Court of El Paso County (Exhibit A) is filed do not address or relate to the C.R.C.P. Rule 69 proceeding before this Court or to the child support and maintenance allegations.

11. The facts presented to the Ontario Court of Justice in support of the request for extradition (Exhibit H, pages 1 through 5) do not support the C.R.C.P. Rule 69 Order entered by this Court to enforce alleged child support or maintenance obligations.

12. The law on which the Ontario Court of Justice relied in ordering the extradition of Mr. Wilfred (Exhibit H, page 27) does not address or relate in any way to the C.R.C.P. Rule 69 proceeding presently before this Court or child support and maintenance obligations.

13. The C.R.C.P. Rule 69 proceedings in the instant case are not based on alleged abduction, abduction in contravention of a custody order, or extortion – the charges within the purview of the Extradition Order.

14. Article 12 of the Treaty (Exhibit C) provides:

(1) A person extradited under the present *Treaty* shall not be detained, tried or punished in the territory of the requesting State for an offense other than that for which extradition has been granted nor be extradited by the State to a third State unless:

   (i) He has left the territory of the requesting State after his extradition and has voluntarily returned to it;

   (ii) He has not left the territory of the requesting State within thirty days after being free to do so; or

   (iii) The requested State has consented to his detention, trial, punishment, for an offense other than that for which extradition was granted, or to his extradition to a third State, provided such other offense is covered by Article 2.

(2) The foregoing shall not apply to offenses committed after the extradition.

15. Mr. Wilfred did not waive extradition to appear before the District Court of El Paso County in Case No. 98 CR 215, or to appear before the United States District Court pursuant to an unlawful arrest, or to appear before this Court on May 30 pursuant to an unlawful detention. *See* letter of April 3, 2000 from Alan D. Gold, Counsel for Mr. Wilfred before the Ontario Court of Justice, to Robert Harward, Deputy District Attorney, El Paso County, Colorado (attached hereto as Exhibit I).

16. Canada has not consented to the detention, trial, or punishment of Mr. Wilfred for alleged failure to pay child support, or for a Rule 69 financial examination – matters other than those for which extradition was granted. *See* Exhibit I.

II. Argument

17. Under the Doctrine of Specialty, Mr. Wilfred can be prosecuted only on those charges or offenses for which he was extradited. *United States v. Abello-Silva,* 948 F.2d 1168, 1173, 1175 (10th Cir., 1991); *United States v. Levy* , 905 F.2d 326, 328 (10th Cir., 1990), *cert. denied*, 498 U.S. 1049, 111 S. Ct. 759, 112 L. Ed. 2d 778 (1991). In determining whether the charges in the instant prosecution are within the scope of the Extradition Order, the relevant inquiry is whether the charges (see *Levy* , supra at 328) or offenses (see *Abello-Silva*, supra, at 1174) alleged in the complaint are different from those stated in the Extradition Order, or correspond with the facts on which the Extradition Order is based. *Abello-Silva*, supra. The Court may consider the totality of circumstances in making this determination (*Levy*, supra at 329), but must ". . . place[s] itself in the position of the asylum country and inquire[s] whether the asylum state would consent to the extradition. . . ." for prosecution of the charges in the complaint. *Abello-Silva,* supra t 1174. See, generally, David B. Sweet, *Application of Doctrine of Specialty to Federal Criminal Prosecution of Accused Extradited From Foreign Country* , 112 A.L.R. FED. 473 (1993).

18. The Rule 69 proceeding simply and clearly does not included in the charges for which Mr. Wilfred was extradited. This proceeding is different from the charges of abduction, extortion, and violation of a custody order for which he was extradited, and, under the totality of circumstances, cannot reasonably be inferred to have been consented to by the government of Canada in entering the extradition order. Accordingly, the instant proceeding violates the Doctrine of Specialty and must be dismissed.

19. Additionally, the orders for the Rule 69 proceeding while the custody and extortion charges remain pending – and before Mr. Wilfred had an opportunity to return to Canada upon conclusion of the pending charges – is an independent violation of the *Treaty* and the Doctrine of Specialty. There is no evidence that the State of Colorado reserved a right before the Ontario Court of Justice to hold a Rule 69 proceeding while seeking extradition for the custody and extortion charges, and there is no evidence that Canada consented to extradition for

this proceeding. See *Cosgrove v. Winney*, 174 U. S. 64, 43 L. Ed. 897, 19 S. Ct. 598 (1899). See also 112 A.L.R. FED. 473, supra, §8(a).

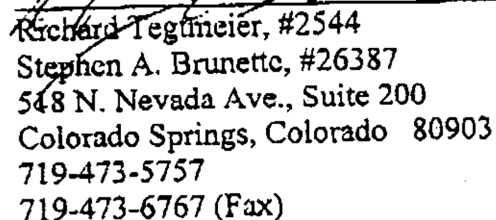
20. Mr. Wilfred did not leave the State of Colorado or the United States after his extradition for the case in El Paso County and voluntarily return. Nor has he left the State of Colorado or the United States within thirty days after being free to do so. Orders entered by the District Court of El Paso County allowed Mr. Wilfred to return to Canada after an appearance on April 7, 2000, and ordered him to return for a subsequent hearing on May 11, 2000 (*See* Exhibit D). Mr. Wilfred's compliance with this Order does not constitute a voluntary departure from and return to the United States within the meaning of the *Treaty*, and does not deprive him of the immunity which he possessed by reason of his extradition, because (1) the jurisdiction of the District Court of El Paso County had not been exhausted; (2) Mr. Wilfred returned to Colorado under Court Order, and (3) Mr. Wilfred has had no opportunity to return to Canada after final discharge from the El Paso County prosecution. *Cosgrove*, supra. See also 112 A.L.R. FED. 473, supra, §5(b).

21. Because the Doctrine of Specialty has been violated in the particulars stated above, this Court lacks personal jurisdiction over Mr. Wilfred, and all Orders related to the insant Rule 69 proceeding must be vacated. *United States v. Vreeken*, 803 F.2d 1085, 1088-1089 (10th Cir. 1986).

WHEREFORE, Mr. Wilfred respectfully requests that this Court enter an Order Vacating all orders related to the Rule 69 proceeding, and grant such other and further relief as the Court deems just.

Respectfully submitted this 28TH day of June, 2000.

TEGTMEIER LAW FIRM, P.C.



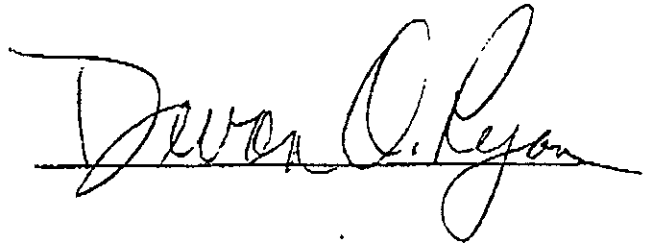
Richard Tegtmeier, #2544
Stephen A. Brunette, #26387
518 N. Nevada Ave., Suite 200
Colorado Springs, Colorado 80903
719-473-5757
719-473-6767 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2000, a true and complete copy of the above and foregoing was delivered via FEDERAL EXPRESS and via FACSIMILE, to the following:

Larry Bohling
Office of the District Attorney
7305 S. Potomac Street
Englewood, CO 80112

Fax #303/643-4631



DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO
Case No. 89 DR 477 Division 2

PEOPLE'S RESPONSE TO OBLIGOR'S MOTION TO VACATE RULE 69 PROCEEDING

In Re the Marriage of:

SANDRA WILFRED, Petitioner

And

HARMON WILFRED, Respondent.

COME NOW the people of the State of Colorado, by and through the deputy of James J. Peters, District Attorney for the Eighteenth Judicial District, and request that the Court deny Respondent's motion to vacate the Colorado Rule of Civil Procedure Rule 69 hearing. AS GROUNDS THEREFORE, the People state as follows:

1. The crux of Respondent's motion is contained in paragraph number 14, on page 3, in which Respondent correctly quotes the referenced *Treaty* as stating that "[a] person extradited under the present *Treaty* shall not be detained, tried or punished in the territory of the requesting state for an <u>offense</u> other than that for which extradition has been granted."(emphasis added by the People).

2. The Colorado Rule of Civil Procedure Rule 69 hearing scheduled for June 29, 2000, at 4:00 in Division 2 of this Court, is not a trial, nor does it involve detainment or punishment and it has nothing to do with an offense.

3. While contempt is available as a quasi-criminal remedy for non-payment of child support, there is no contempt pending in this case. Although the People filed a motion in early 2000 seeking a contempt citation, the People subsequently filed a motion asking that the Court dismiss the motion and citation. The People did so after being notified by Respondent's Canadian attorneys that the *Treaty* upon which Respondent relies precludes criminal prosecution.

4. There are currently no criminal matters, nor anything else pending in this action that the Respondent can even remotely construe as involving detainment, trial, punishment or an offense. The Colorado Rule of Civil Procedure Rule 69 hearing currently scheduled is entirely civil in nature and merely allows the People the opportunity to depose the child support judgment debtor regarding the existence of

possible assets to satisfy the judgment. Neither the Court nor the People have any ability whatsoever to "punish" Respondent within the meaning of the Treaty, in the context of the Rule 69 hearing.

5. Respondent has not cited, nor are the People aware of any provision of the Treaty that precludes civil proceedings, such as the Rule 69 hearing, not involving trial, punishment, detainment or an offense. The date of the hearing was set, at Respondent's request and for his convenience, to coincide with a required appearance in the criminal matter for which he was extradited. The Court should, for all of the reasons stated above, deny Respondent's motion to vacate the hearing.

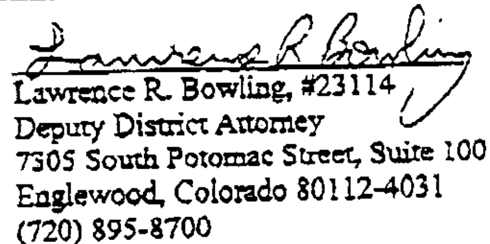
6. The referenced civil rule does give the Court the ability, upon the judgment debtor's failure to appear, to "issue a bench warrant commanding the sheriff of any county in which the judgment debtor may be found, to arrest and bring the judgment debtor forthwith before the court for proceedings under this [69] rule." The Court should reach the issue of whether the *Treaty* precludes the Court from doing so as a separate matter, only if and when Respondent fails to appear and only if and when the judgment creditor requests a warrant by motion, which is a prerequisite to the Court's ability to issue a warrant under the rule.

7. The Court set the $750,000 bond at the June 16, 2000 hearing, with out the People requesting the same. The People take no position on Respondent's motion to invalidate and rescind the bond.

WHEREFORE, the People request that the Court deny Respondent's motion to vacate the Colorado Rule of Civil Procedure Rule 69 hearing.

Respectfully submitted this 28th day of June, 2000.

JAMES J. PETERS
DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

By: 
Lawrence R. Bowling, #23114
Deputy District Attorney
7305 South Potomac Street, Suite 100
Englewood, Colorado 80112-4031
(720) 895-8700

89 DR 477

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing Response to Vacate Rule 69 Proceeding was placed in the United States Mail, postage pre-paid, on June 28, 2000, 2000, to the following:

Richard Tegtmeier
518 North Nevada Ave., suite 200
Colorado Springs, Colorado 80903

Tracy Cobb

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. 89 DR 477 Division M

REPLY TO PEOPLE'S RESPONSE TO MOTION TO VACATE RULE 69 PROCEEDING

In Re the Marriage of:

SANDRA WILFRED, Petitioner

and

HARMON WILFRED, Respondent.

COMES NOW the Respondent, Harmon Wilfred (Mr. Wilfred), by and through The Tegtmeier Law Firm, P.C., his attorneys, and in Reply to the People's Response to his Motion to Vacate Orders regarding Rule 69 proceedings, avers and argues as follows:

I. The Instant Rule 69 Proceedings Involve An "Offense" Other Than That For Which Extradition Was Granted, In Violation of the Rule of Specialty.

1. The People's assertion – without citation to any authority – that these Rule 69 proceedings are not an "offense" within the meaning of the Rule of Specialty is without support in fact or law. As stated in ¶17 of his Motion to Vacate, Mr. Wilfred can be prosecuted only on those charges or offenses for which he was extradited. *United States v. Abello-Silva*, 948 F.2d 1168, 1173, 1175 (10th Cir., 1991); *United States v. Levy* , 905 F.2d 326, 328 (10th Cir., 1990), *cert. denied*, 498 U.S. 1049, 111 S. Ct. 759, 112 L. Ed. 2d 778 (1991). In determining whether the charges in the instant prosecution are within the scope of the Extradition Order, the relevant inquiry is whether the "charges" (see *Levy* , supra at 328) or "offenses" (see *Abello-Silva*, supra, at 1174) that purportedly bring Mr. Wilfred within the jurisdiction of this Court are different from those stated in the Extradition Order, or correspond with the facts on which the Extradition Order is based. *Abello-Silva*, supra. The Court may consider the totality of circumstances in making this determination (*Levy*, supra at 329), but must ". . . place[s] itself in the position of the asylum country and inquire[s] whether the asylum state would consent to the extradition. . . ." for the instant Rule 69 proceedings. See *Abello-Silva*, supra at 1174. See, generally, David B. Sweet, *Application of Doctrine of Specialty to Federal Criminal Prosecution of Accused Extradited From Foreign Country* , 112 A.L.R. FED. 473 (1993).

2. The test for whether the instant proceedings constitute a "separate offense" cannot be based on a "technical refinement of local law," but must be based on a determination of whether the extraditing country would consider the offenses separate. *United States v. Paroutian*, 299 F.2d 486 (2nd Cir. 1962); *Abello-Silva*, supra at 1174. For reasons stated in ¶¶1-14 and 18-21 of his Motion to Vacate, the instant proceeding is clearly beyond the scope of the extradition order, and violates the Rule of Specialty. The People's assertion that the term "offense" does not include these proceedings is without support in fact or law, and asks this Court to create a similarly unsupported "technical refinement of local law" that would violate the Rule of Specialty.

II. The Rule of Specialty Prohibits These Civil Proceedings, And Particularly Bars an Order that Would Compel Mr. Wilfred's Presence.

3. The People aver that the Rule of Specialty does not apply to this civil proceeding and that it does not bar the Rule 69 hearing because there is no "detainment, trial, punishment, or an offense." People's Response at ¶4. This assertion is without support in law.

4. As early as 1918, the United States Court of Appeals for the Fifth Circuit ordered dismissal of a civil suit, and reversed several civil judgments including one for civil contempt, against an individual who had been extradited from the Republic of Panama to the Panama Canal Zone on a criminal contempt charge, and was then served civil process while a prisoner in the Canal Zone on the criminal charge. *Smith v. Canal Zone*, 249 F. 273 (5th Cir. 1918). The Court of Appeals ruled that the District Court lacked the right to exercise jurisdiction over the individual for any purpose other than the one for which he had been delivered to the Panama authorities. *Id.* Similarly, this Court lacks the right to exercise jurisdiction over Mr. Wilfred for any purpose other than those for which he has been extradited – and therefore has no jurisdiction over Mr. Wilfred for the instant Rule 69 proceedings.

5. More recently, the Supreme Court "assumed without deciding" that the Principle of Specialty immunized a person from civil service of process while his presence in the United States was compelled by extradition for another matter. In *Van Cauwenberghe v. Baird*, 486 U.S. 517 (1988). Furthermore, in addressing service of process only, the Court reasoned that:

> [T]o the extent that the principal of specialty protects an extradited person from the exercise of coercive power by the receiving state on matters not anticipated by the extradition, the defense of a civil suit does not significantly restrict a defendant's liberty. Service of process merely requires that a defendant appear through an attorney and file an answer to the complaint to avoid default. *There is no possibility that the defendant will be subject to pretrial detention or be required to post bail. The defendant is not even compelled to be present at trial.* We therefore conclude that a right not to stand trail in a civil suit is not an essential aspect of a claim of immunity under the principle of specialty.

Id. at 526 [emphasis added].

6. In view of the stated basis of the Supreme Court's opinion, there can be no doubt that if *Van Cauwenberghe* would have been compelled to attend a hearing – such as the instant Rule 69 hearing – the Court would have held that such compelled attendance violated the Specialty provision of the applicable extradition treaty.

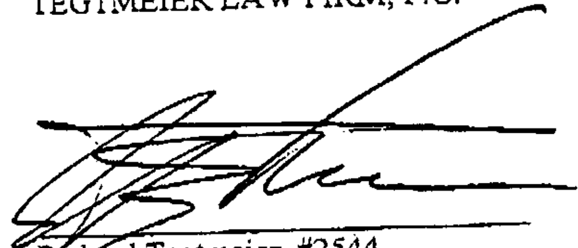
III. The People's Lack of Opposition to Mr. Wilfred's Motion to Invalidate and Rescind Bond Requires the Bond to be Invalidated and Rescinded.

7. The People take no position on Mr. Wilfred's Motion to Invalidate and Rescind Bond. People's Response at ¶7. Accordingly, Mr. Wilfred respectfully requests that the bond be rescinded.

WHEREFORE, for reasons stated above and in the Motion to Vacate, Mr. Wilfred respectfully requests that this Court Vacate all Orders pertaining to the instant Rule 69 proceeding, and grant such other and further relief as the Court deems just.

Respectfully submitted this 29TH day of June, 2000.

TEGTMEIER LAW FIRM, P.C.



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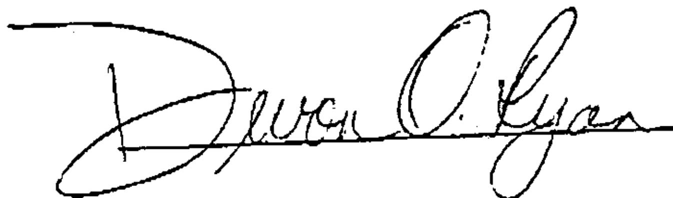

Filed in the Div.

JUL 13 2000

District Court
Arapahoe County, Colo.

SENT TO DIVISION Z

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO
Case No. 89DR477 Division M

ORDER

In Re the Marriage of:

SANDRA WILFRED, Petitioner

and

HARMON WILFRED, Respondent.

THIS MATTER having come before The Court this 29th day of June, 2000, on Respondent's Motion to Vacate the Magistrate's Order for Rule 29 Hearing and Examination, and The Court having been fully advised in the premises, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The $750,000 personal recognizance bond securing the presence of Mr. Wilfred is hereby vacated.

2. The Rule 69 proceeding scheduled for this date is vacated.

3. Mr. Wilfred's Motion to Dismiss the previous arrest warrant is denied; however, The Court rules law enforcement agency may not execute the arrest warrant against Mr. Wilfred during the time he is returning to Colorado Springs to face charges on criminal action number 98CR215 from his home in Canada, while he is in Colorado pursuant to Court order, nor returning to his home in Canada from a proceeding in the above captioned case as his presence in that matter has been secured by a the *Treaty on Extradition Between Canada and the United States of America*.

DATED this 14 day of July, 2000, Nunc Pro Tunc June 29, 2000.

ARAPAHOE DISTRICT COURT