

District Court EL PASO County, Colorado Court Address: 270 South Tejon Street Colorado Springs, Colorado 80903	COURT USE ONLY
In Re The Marriage Of: Petitioner: Vanessa R. Dolbow And Respondent: Robert W. Johnson EL Paso County CSE Unit, Third Party Intervenor	
Attorney or Party Without Attorney (Name and Address): Robert Wayne Johnson, Pro Se P.O. Box 75162 Colorado Springs, Colorado 80970 Phone Number: (719) 640-2155	Case Number: 96DR1112 Division: N/CS Courtroom: IVD Case Number: 21-916020-00-7A
PETITION FOR REVIEW	

I, Robert Wayne Johnson, hereby submit this Petition for Review pursuant to C.R.M. Rule 7(a) for the purpose of seeking an independent review of District Magistrate Jayne Candea-Ramsey's final Order of March 26, 2010 denying my new motion to modify child support. The Order asserted primarily that I had not shown "changed circumstances that are substantial and continuing" as required by C.R.S. Section 14-10-122(1)(a). This petition is accompanied by the memorandum brief, certain attachments, the hearing transcript, and my affidavit.

Wherefore, I request this ___ Day of April, 2010 that the reviewing judge or judges selected pursuant to C.R.M. Rule 7(a)(2) determine if the Magistrate's decision to deny my new motion to modify child support was appropriate and then, if circumstances are found to be substantial and continuing as shown by me, that the Court reject the final ruling to deny my motion to modify child support and resolve my case according to the attached letter dated March 29, 2010 to Chief Judge Kirk Samelson.

Respectfully Submitted,

Robert Wayne Johnson, Pro Se

MEMORANDUM BRIEF

TO:	Reviewing Judge(s)
FROM:	Robert Wayne Johnson
DATE:	April ____, 2010
CASE NO:	96DR1112
RE:	Memorandum Brief

I. FACTS

On March 26, 2010, District Magistrate Candea-Ramsey issued the Order denying my new motion to modify child support based on her review of the Verified Motion to Modify Child Support Pursuant to §14-10-122, C.R.S. (Verified Motion) filed on March 8, 2010, the Amendment to Verified Motion to Modify Child Support (Amendment) filed on March 10, 2010 and attorney Eigel's Response to Verified Motion to Modify Child Support Pursuant to §14-10-122, C.R.S. filed on March 11, 2010. Also on March 26, 2010, the Magistrate issued final rulings on my motions for change of venue and attorney Eigel's combined response to the first motion for change of venue and its amendment as well as approved the final Amended Order. The Magistrate did not acknowledge reviewing attorney Eigel's response to my motion for a hearing titled "Objection to Approve Amended Order" or acknowledge the second motion for a hearing titled "Continued Objection to Proposed Amended Order" filed on March 15, 2010. The Magistrate signed her name to the two Orders also issued on March 26, 2010 but stamped her name to the Amended Order and mailed them together to me by U.S. mail.

In the course of reviewing the Verified Motion filed on self-help form JDF 1403, the Magistrate learned from Number 7 that I filed the motion because there was a substantial change in income and the motion was "an extraordinary continuation of the original motion" filed by me on September 21, 2009. At the time of filing the Verified Motion, I relied on the same gross

incomes used by attorney Eigel for October 6, 2009 through December 31, 2009 and commencing January 1, 2010 to meet the requirements of §14-10-122, C.R.S. to establish that a substantial change in income had occurred, while relying on the “extraordinary” circumstances surrounding both the child support enforcement case and the prosecution of my child support modification case to show the change in circumstances was continuous. My reason to modify child support had not changed. I wanted 30 of 39 months originally claimed by CSEU to be owed to Ms. Dolbow eliminated.

In the Verified Motion, Number 4 regarding overnights per year was marked “irrelevant” and I continued to reject attorney Eigel’s use of Worksheet A showing Mother having child for years 2005, 2006, and 2007 and referred to them as “blatantly false worksheets”, while at the same time referencing the Extraordinary Motion for Change of Venue Pursuant to Colorado Rules of Civil Procedure 98(c)(1) and 98(e) filed on March 4, 2010 that first discussed the irregularities in the handling of my case. As the Magistrate’s diligent review of the motions for change of venue should have indicated, corrections were made in the Amendment to Extraordinary Motion for Change of Venue filed on March 9, 2010 based on an increasing knowledge of the mishandling of my case by CSEU, the N/CS Division, and attorney Eigel. I never changed my position the wrong worksheets were used for corrupt purposes.

I filed the Amendment to focus on resolving the issue of the alleged arrears. I excluded years 2005, 2006, and 2007 because of the private change in custody. I requested a credit of \$4,500 for 2008 and left the \$900 of unpaid child support outstanding. I then accepted the substantially increased gross incomes used by attorney Eigel for worksheet calculation purposes. I did not agree that her method of imputing income was correct; I accepted it to be able to file the motion

to modify child support as “verified” to close my child support enforcement and modification case.

The January 13, 2010 hearing transcript and the affidavit accompanying this petition continue to demonstrate the substantial and continuous change in circumstances that have existed since October 2008 and are ongoing as the following related facts disclose:

Change in Custody

The ongoing dispute with CSEU centered on the three year change in custody that CSEU officially refused to recognize beginning October 10, 2008. The record shows attorney Eigel first framed this change in custody in her direct examination of Ms. Dolbow by asking her if there was a “voluntary change of physical care in January 2005.” [TR Page 17 lines 1-2]. Ms. Dolbow responded in the affirmative, and Ms. Dolbow offered her explanation. “Um, I had asked Mr. Johnson if he could help me. Our son was not going to school, he wasn’t, you know. And Mr. Johnson was retired. And I ask him if he could possibly start living with him. And, why - - as it turned out he had him half time and I had him half time.” [TR Page 17 lines 5-9] After a detailed discussion of changing schools that included identifying school districts, Attorney Eigel asked Ms. Dolbow: “Lets start with January 2005 when Marcus was in Skyview Middle School, was he living primarily with Mr. Johnson?” Ms. Dolbow answered “Yes.” (TR Page 18 lines 16-19) Then Ms. Eigel immediately asks, “And was he - - did you have parenting time with Marcus?” “Yes” “And what was your parenting time?” “Thursday and Friday and Saturday and Sunday” “Four per week?” “Yes or other times Friday, Saturday, Sunday.” [TR Page 18 lines 20-25] Attorney Eigel then asks the leading question, “So would you say it was about 50/50 parenting time?” Ms. Dolbow answered,

“Absolutely, Yeah.” [TR Page 19 lines 1-2] From this point in the record and through the direct examination of Ms. Dolbow about custody during years 2006 and 2007, “50/50” is used by attorney Eigel four more times and given by Ms. Dolbow two more times. [TR Page 19 lines 14, 17, 23; TR Page 20 line 9; TR Page 21 line 18]

Attorney Eigel then established that my son returned to live with Ms. Dolbow in January 2008 and the questioning shifted to Ms. Dolbow’s income for year 2005. Attorney Eigel asked, “Do you know what your income was in 2005?” Ms. Dolbow answered, “I don’t. I believe I didn’t have an income then. That was shortly after a car wreck I had and I had taken a mortgage out on my house, I was living off the mortgage on -- second mortgage.” [TR Page 22 lines 23-25 through Page 23 line 1] Attorney Eigel then established Ms. Dolbow’s 2006 income was for full-time employment of at least 36 hours per week after Ms. Dolbow’s initial answer, “Um, I think it was 9-70.” [TR Page 23 line 12] Attorney Eigel then established Ms. Dolbow’s 2007 income. Attorney Eigel asked, “Do you know what your pay rate was in 2007?” Ms. Dolbow responded, “You know, I - - I honestly don’t.” Attorney Eigel responded, “Okay. You now earn 10-69 an hour. Is that right?” [TR Page 23 lines 23-25]

Attorney Eigel then concluded her direct examination of Ms. Dolbow by establishing I provided my son’s health insurance coverage and Ms. Dolbow had a monthly expense for 2009 for his asthma medication. Attorney Eigel then ask for the Court’s permission to “briefly” recall me to the stand “just in regards to the issue of the parenting time from ’05, ’06, ’07.” [TR Page 29 lines1-3] In her redirect examination she began, “Mr. Johnson (if you would please) tell me what you believe the parenting schedule was between yourself and Ms. Dolbow in 2005, 2006, 2007, when Marcus was at Skyview and Coronado High School? [TR

Page 29 lines 9-11] I then tried to put the school years into perspective because of the amount of attention given to the subject. I had to work with my memory of his age, class rank, school changes, and how summer recesses were spent. [TR Page 29 lines 12-25] After offering my memory account, I closed my answer by asking, “Now what were the other years in question?” [TR Page 29 line 25]

Attorney Eigel continued her redirect examination based on the year I drove my son to school: “So when he was at Skyview and when you drove him back and forth to Coronado at first, I assume it was freshman year of high school, did he have overnight parenting time with Ms. Dolbow at that time, where he would go and spend the night at her home?” [TR Page 30 lines 1-4] I answered: “We have always been real flexible. He would request, because a lot of his friends were still on the west side to spend time with his mom. Maybe not an agreed-upon time, but it was always - - she was always forewarned that okay, Marcus wants to come over, this may be my time to have him, you know. And if it was a problem she would have told me. I think.” [TR Page 30 lines 5-10]

Attorney Eigel then moved into Ms. Dolbow’s testimony about having our son on Thursday, Friday, Saturday. I responded to her questioning by saying, “Uh, I don’t dispute what she - - I don’t know. I - - you know, I can’t say because it’s never been written in stone.” Attorney Eigel then immediately followed, “You heard Ms. Dolbow’s testimony regarding what she believes was his parenting time and when he was with her on (inaudible).” I responded, “She said about 50/50.” Attorney Eigel started to ask something, “Um hum. Does-” Then I said, “And I have no problem with that. I mean he’s the son of her and me. So, I mean, 50/50 that’s pretty fair.” She had no other questions. [TR Page 30 lines 13-23]

Discovery

The testimony given in court can be compared with the limited information provided to me by the CSEU through a copy of Ms. Dolbow's attached Affidavit of Direct Custody and Support (Affidavit) dated September 29, 2008. When it was first shown to me, I knew only that 30 of the 39 months marked with zeros corresponded with the three year change in custody. Then after talking with Ms. Dolbow, I confirmed she was not trying to collect child support for that period of time. Later, upon closer examination of the Affidavit, I noted Ms. Dolbow had placed a check mark next to the statement "[t]he child[ren] have been in my custody and resided with me at all times since the children's birth." I also noted she had given me credit for paying child support for the first six months of 2005 after the change in custody occurred. Therefore, the outstanding balance in 2008 shown in the amendment to the Verified Motion was presumed by me to be paid.

On the date of the hearing, I also did not realize the Affidavit was signed 11 days after CSEU created Ms. Dolbow's Family Support Registry Account and assigned the child support enforcement case number to it. (See attached.) This irregularity was first cited in the first motion for change of venue on March 4, 2010 and was re-cited in the second motion for a hearing on March 15, 2010. Attorney Eigel did not take the opportunity to explain it in her March 11, 2010 response to my first motion for change of venue or choose to respond to it in the second motion for a hearing. In fact, attorney Eigel stopped responding on March 11, 2010 following CSEU's issuance of the levy to American National Bank stating the Order (Amended Order) had been entered January 13, 2010 commencing January 1, 2010.

In the first motion filed by me on March 2, 2010, I requested a hearing by raising the issue

of self-dealing and alleging a conflict of interest and, then, provided six reasons to show good cause to grant a hearing. The first three reasons were issues of discovery, while the fourth and fifth were related to the existing discovery concerns and an anticipated discovery problem. The Magistrate's diligent review of my case file should have indicated I believed I was entitled to information used to seize my financial assets and suspend my driver's license, thereby restricting my personal freedom in two different ways.

In attorney Eigel's Response to Objection to Proposed Amended Order, Number 4 states: "Respondent's objections relating to requests for discovery from the CSE Unit are not relevant to the proposed Amended Order. No issues of discovery were addressed at the January 13, 2010 hearing." The record refutes this defense. I raised issues of discovery early in attorney Eigel's direct examination of me. "Well, my question has always been for 16 months, dealing with, uh, Child Support Enforcement here in town. Uh, it's more based on the information that they have, uh, that they won't release to me. I don't know what Ms. Dolbow came to CSE for. (What) did she come to CSE for?" [TR Page 7 lines 12-16] Ms. Eigel's immediate response was comparable to CSEU's refusal to consider anything but child support payments during the three administrative reviews it conducted. Ms. Eigel said, "Let's -- let's focus on -- at this time I'm trying to focus on what are you asking the Court to do today? Are you asking the Court that you not owe child support for the three years that Marcus -- you're saying Marcus lived with you?" [TR Page 7 lines 17-20] I responded, "I'm asking to be heard by Policy Studies who runs Child Support Enforcement. I -- I need to be heard. I have, uh fought this battle for 16 months, okay. My issue is not with Ms. Dolbow, it never has been. This is the first contact, ma'am, I've had with you. After many calls to your

office, okay. I've called Belveal, Rumans, and your name, I'm not sure." [TR Page 7 lines 21-25; TR Page 8 line 1]

I continued stating, "We -- this is my first contact with anyone outside of the caseworkers at CSE. And I've tried since October 4th of 2008. And I would like to know what prompted the enforcement actions against me and what Policy Studies knows. And that is all I've ever wanted for the last 16 months. Ms. Dolbow has done nothing wrong." [TR Page 8 lines 7-11] She then immediately shifted to the motion to modify child support I filed on September 21, 2009. I then attempted to shift back to the ongoing dispute with CSEU/Policy Studies. District Magistrate John Paul Lyle then said, "Sir. You're on the witness stand and you're under oath. You're to be answering questions." [TR Page 9 lines 12-13]

Therefore, the record shows that discovery issues were raised. Yet, because the Magistrate did not acknowledge reviewing attorney's Eigel's response to my motion for a hearing of my Objection to Proposed Amended Order, the Magistrate also did not acknowledge knowing discovery issues existed. Consequently, the Magistrate did not issue an Order pertaining to the two hearing motions.

Income

There are two primary considerations for determining child support – the income of both parents and parenting time. As discussed under the Change in Custody heading, Ms. Dolbow reported no wages earned in 2005, she thought she earned \$9.70 an hour in 2006, did not know what she earned in 2007. Then during attorney Eigel's continued direct examination, attorney Eigel agreed to estimate what she made in 2008 using her current hourly rate of \$10.69 and Ms. Dolbow's statement that she had received small raises between 2006 and

2009.

According to CSEU's online application guidelines, Ms. Dolbow was required to provide a verification of income (i.e. pay stubs, tax returns) at the time of her application for collection services. Based on Court testimony and the failure to provide me with the financial disclosures and other documents specified in the Delay Prevention Order issued by Magistrate John Paul Lyle on November 24, 2009, my only reference to Ms. Dolbow's income is the attached Affidavit with Respect to Child Support (Affidavit) that I believe was associated with attorney Tracy Rumans' October 14, 2009 response to my September 21, 2009 motion to modify child support. The Affidavit is divided into sections. The section to verify income is under Your Primary Employment. It has three places to mark an X to identify the source documents relied upon as proof of income: IRS tax forms for the last three years, pay stubs for the last three months, and various forms to prove income from self-employment. None of them were marked. Beneath this subsection, Ms. Dolbow stated that she started working for her current employer in September 2005 and presently earns \$10.69 per hour.

During attorney Eigel's direct examination pertaining to my income, she established that I retired in 2005, I was not certified as disabled, my only source of income was my retirement through documents provided by me, and I received a cost of living increase each year between 3 and 3%. Attorney Eigel began the questioning by asking, "And your current financial indicate - - financial affidavit, excuse me, indicates you're receiving \$5,291.00 per month in retirement. Is that correct?" [TR Page 10 lines 3-5]

She then focused her attention on whether or not I intended to work during my retired

years, in much the same manner as CSEU IV-D Administrator Laura Davidson. I told her I had three potential jobs but my driver's license was suspended and the jobs were out of town or out of the country. My interests in working again, and not in Iraq, was based on the uncertainty of the ongoing dispute with CSEU, and its continued impact on me financially.

On direct examination, attorney Eigel asked, "And what type of job - - employment were the job offers for?" I responded, "It was for electrical work. I'm a member of, uh, the International Brotherhood of Electrical." Attorney Eigel then immediately asked, "Do you have an electrician's license?" I answered, "I have - - yes, ma'am, I'm registered with the State." [TR Page 11 lines 8-12] Through attorney Eigel's next series of questions, I told her, after complaining about answering questions about how much the jobs would have paid and being admonished by Magistrate Lyle to answer her questions, I said the job in Iraq paid \$280,000, the job in California paid \$190,000, and the job in Colorado was a contract job paying \$38.00 per hour.

Attorney Eigel and Magistrate Lyle then began discussing worksheets and imputing income. In the record for 2005, Attorney Eigel states, "One child. Mother's income, she indicated she was unemployed. I (inaudible) I believe at that time it was \$893.00 month. This would show that - - I'm not imputing any additional income to Mr. Johnson - - child support would be \$467.00, which is not a 10 per cent change. Does the Court want me to calculate it with imputation of income? Or just go forward to 2006?" District Magistrate Lyle responded, "I would like you to comment on why we don't impute in this case." Attorney Eigel answered, "And we would be asking the Court to impute. Mr. Johnson testified he has multiple job offers (inaudible) since he's been retired, from a high of \$280,000.00 in Iraq to

\$190,000.00 in California. (Inaudible) Would not be requesting imputation of those amounts of money. He did indicate he's a licensed electrician, and that he had a job offer on the eastern plains of Colorado at \$38.00 an hour, which would be an additional \$6,857.00, which would give him 6,857, plus the 47-01, would be an income of 11,288. (Which means that) child support would increase in 2005, using the guidelines in effect at that time, to \$1,045.00. Without the imputation, again there is no 10 per cent change. Using that same computed - - imputed income of father, plus we're now showing a three per cent increase, 48-42 (inaudible) gross income of 11, 429. [TR Page 32 lines 3-25]

Attorney Eigel then worked through her estimates of Ms. Dolbow's contribution of income to our son's physical care and included income from her inheritance in 2009. Attorney Eigel then stated, "And in 2010 the inheritance would drop off for mother. Without any income imputed to father, child support would be \$699. 00. With that income imputed that's \$11,178. Child support would be \$1,357. 00. (PAUSE.) [TR Page 34 lines 12-15]

After a personal exchange between Magistrate Lyle and attorney Eigel, "Your Honor. I'm sorry, your Honor, child support - - (inaudible) Would request that child support would be modified at least as of October 1, 2009 to \$958.00, and then \$1,357.00 commencing January 1, 2010." [TR Page 34 lines 22-25]

In the record of the Findings and Rulings by the Court, Magistrate Lyle listened to Attorney Eigel as she explained how Worksheet B would be used and how she determined the monthly child support obligation. Magistrate Lyle responded, "All right. Those are the figures that I want used." Attorney Eigel said, "Okay." Attorney Eigel's calculation

concluded, “So then for 2005, it’s 4-67, which was no 10 per cent change. For 2006, and that’s imputing income minimum wage to mother, for 2006 mother became employed. Child support reduces to \$346.00. For 2007 mother - - and this is where estimating that she had gotten a raise to approximately \$10.00 an hour, increasing father’s retirement but I imputed income. 2007 child support would be \$355.00.” [TR Page 36 lines 15-21] Then attorney Eigel works through the other years using estimates of Ms. Dolbow’s income and my imputed income.

Magistrate Lyle then summarized what was happening between him and attorney Eigel: “All right. Child support from October, 2009 will be \$958.00 a month. And then commencing as of January 1st, 2010, it’s \$1,357.00 a month. All payments are to be made through the Family Support Registry by income assignment. [TR Page 37 lines 18-20] Attorney Eigel then informed Magistrate Lyle the State’s administrative review did not consider the change in custody and, therefore, adjustments would need to be made.

Magistrate Lyle responded, “All right. The arrears balance is likely to be impacted somewhat, although from the numbers I’m looking at, it won’t be - - it won’t be significant, or it won’t be tremendously significant. But those calculations are to be re-done by the State pursuant to this new ruling Any questions, Ms. Dolbow? Her response, “What just happened?” [TR Page 38 lines 8-13]

II. ISSUES

Did Magistrate Candea-Ramsey’s two known reviews of my case file, including the Verified Motion, the Amendment, exhibits and attachments, support her final ruling to deny my new motion to modify child support for failing to show a substantial and extraordinary

continuing change in circumstances?

Did the increase in my monthly child support obligation from \$438.80 to \$1,357.00 (with credit for my monthly \$385 expense for health insurance) appear to be unusual, considering my first motion to modify child support was to reduce arrears by \$12,864?

Was it fair treatment by the Court to expect me to provide complete disclosure with sworn financial statements and to allow the Court to consider Ms. Dolbow's unverified and undocumented financial information and, then, estimate her financial contribution to our son's physical support?

Was it fair treatment by the Court to not impute income to Ms. Dolbow in 2005 for jobs that might be available to her if she wanted to work, or to not expect her to increase her future earning ability to make a greater contribution to our son's physical support?

Did attorney Eigel need a month to submit the proposed Order from the proceedings of January 13, 2010, considering the speed and accuracy of the calculations performed in well under an hour that were exactly the same as the worksheets for partial year 2009 and commencing January 1, 2010 dated January 26, 2010?

Did attorney Eigel impute my income to create the substantial change needed to modify the original order?

Was it reasonable for attorney Eigel to assume that I could take employment after hearing my testimony I could not accept jobs because my driver's license was suspended?

Is it reasonable to believe Ms. Dolbow waited more than three years to claim unpaid child support during periods of unemployment and low pay?

III. SUMMARY

The handling of my child support enforcement case and child support modification case has been corrupt from sometime in September 2008 until the present.

IV. RECOMMENDATION

Reject the Order denying my two motions to modify child support and, then, resolve and close my child support modification case as indicated in the attached letter of resolution.

AFFIDAVIT OF SERVICE

I declare under oath that on April ____, 2010, a true and correct copy of the foregoing Petition for Review with the Memorandum Brief and attachments and a copy of my personal affidavit were sent by U.S. mail, postage prepaid, addressed to the following:

Vanessa R. Dolbow
1836 Brookdale Drive
Colorado Springs, CO 80918-3476

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Robert Wayne Johnson, Pro Se

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____.

My Commission Expires: _____

Notary Public Signature