

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 21, 2015 CASE NUMBER: 2015SA52
Original Proceeding in Unauthorized Practice of Law, 14UPL065	
Petitioner: The People of the State of Colorado, v. Respondent: Lathronea Gresham.	Supreme Court Case No: 2015SA52
ORDER OF INJUNCTION	

Upon consideration of the Order Deeming Allegations Admitted Pursuant to C.R.C.P. 8(d) and Granting Motion for Judgment on the Pleadings and Report of Hearing Master Pursuant to C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that Respondent, LATHRONEA GRESHAM, shall be, and the same hereby is, ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado.

IT IS FURTHER ORDERED that Respondent, LATHRONEA GRESHAM is assessed costs in the amount of \$226.00. Said costs to be paid to the Office of Attorney Regulation Counsel, within thirty (30) days of the date of this order.

IT IS FURTHER ORDERED that a fine be imposed in the amount of
\$250.00.

BY THE COURT, OCTOBER 21, 2015.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p>Petitioner: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: LATHRONEA GRESHAM</p>	<p>Case Number: 15SA052</p>
<p>ORDER DEEMING ALLEGATIONS ADMITTED PURSUANT TO C.R.C.P. 8(d) AND GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</p>	

Before the Presiding Disciplinary Judge (“the PDJ”) is “Petitioner’s (A) Motion to Deem the Allegations of the Petition Admitted, (B) Motion for Judgment on the Pleadings, and (C) Request for Recommendation of Injunction and Other Relief,” filed on July 28, 2015, by Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”). Lathronea Gresham (“Respondent”) did not respond to the motion.

I. PROCEDURAL HISTORY

On February 17, 2015, the People filed a “Petition for Injunction” with the Colorado Supreme Court, which issued an “Order to Show Cause” on February 20, 2015, directing Respondent to show cause why she should not be enjoined from engaging in the unauthorized practice of law in the State of Colorado. Respondent responded to the petition on June 1, 2015, and filed an amended answer on June 4, 2015. Neither answer conformed to C.R.C.P. 8(b). The People filed a “Motion to Proceed” on June 2, 2015, and on June 15, 2015, the Colorado Supreme Court appointed the PDJ as hearing master.

On July 6, 2015, Respondent filed with the PDJ a combined motion and answer to the motion to proceed. This pleading also did not comply with C.R.C.P. 8(b). The PDJ then held a scheduling conference on July 9, 2015, and set a hearing in this case for October 14, 2015. Also at the conference, the PDJ ordered Respondent to file an answer in compliance with C.R.C.P. 8(b) by July 23, 2015. Respondent did not file an answer and instead, on August 5, 2015, filed a motion to dismiss. Her motion was denied by the PDJ on August 12, 2015. In that order, the PDJ once again ordered Respondent to file an answer to the People’s petition, this time by August 26, 2015. The PDJ informed Respondent that if she failed to do so, the

PDJ could deem the averments in the People’s petition admitted. She did not file a responsive pleading.

In their instant motion, the People request that the PDJ deem admitted all the allegations in their petition (in particular allegations 24-38, 43-50, and 57) and find, as a result, that Respondent engaged in the unauthorized practice of law. They argue that the PDJ should do so because Respondent did not obey the PDJ’s order to file a pleading that addresses each factual allegation in the People’s petition, as required by C.R.C.P. 8(b). As additional support, the People point to Respondent’s pleadings filed in this case in which she admits to drafting and filing these two motions.

In the motion for judgment on the pleadings, the People argue that Respondent acted in a representative capacity with respect to her nephew in a probate proceeding. Their petition also alleges that Respondent drafted, signed, and filed two combined motions in Denver District Court and Denver Probate Court on behalf of her nephew. The People also cite legal authorities countering Respondent’s “interested party” defense, as set forth in her various pleadings. The People ask the PDJ to recommend that Respondent be fined the minimum amount of \$250.00 and be assessed \$226.00 in costs.

II. MOTION PURSUANT TO C.R.C.P. 8

C.R.C.P. 8(b) requires that a party “state in short and plain terms his defenses to each claim asserted” and “admit or deny the averments of the adverse party.” C.R.C.P. 8(d) provides that averments in a pleading to which a responsive pleading is required—such as the People’s petition—“are admitted when not denied in the responsive pleading.”

Although Respondent filed an amended answer on June 4, 2015, as well as a motion to dismiss on July 6, 2015, neither specifically responds to the factual contentions in the People’s petition; rather, those documents introduce a variety of legal concepts.¹ Further, Respondent did not comply with the PDJ’s later order to respond to those factual allegations. Because Respondent has not denied the factual averments of the People’s petition, the PDJ deems allegations 1-55 and 57 **ADMITTED**.

III. MOTION FOR JUDGMENT ON THE PLEADINGS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

C.R.C.P. 12(c) allows a party to seek judgment on the pleadings after the pleadings are closed, but within such time as not to delay the trial. “A court should not grant such a

¹ Respondent’s pleadings in this matter implicitly concede that she drafted the pleadings in her nephew’s criminal and probate matters. The defenses she raised in those pleadings merely address why those conceded facts should not be considered the unauthorized practice of law. See Respondent’s motion titled “Comb. Motion, Answer to Second Motion to Proceed and Notice of Fraud on the Court Upon the Court by Officers of the Court and Federal Employees Against Lathronea P. Gresham, Justin S. Jamison and Estate of Angelette J. Jamison – All U.S. Born Citizens,” filed on July 6, 2015 (“July 6 Motion”) at 2-5; Respondent’s “Amended Answer to Order,” filed on June 4, 2015 (“Amended Answer”) at 4, Ex. B.

motion unless the matter can be finally determined on the pleadings.”² Here, the allegations of the petition are not in dispute, and the matter can be resolved on the pleadings. The PDJ determines that the admitted allegations of the People’s petition, which are summarized below, establish that Respondent engaged in the unauthorized practice of law.³

Factual Findings

Respondent’s sister Angelette Jamison passed away.⁴ Ms. Jamison’s estate was the subject of a probate proceeding in the Denver Probate Court before Judge Elizabeth Leith.⁵ Ms. Jamison’s son, Justin Jamison (“Jamison”), was a beneficiary of his mother’s estate and a co-personal representative of the estate, together with Robin Toviessi.⁶ Jamison was also a defendant in a criminal matter before Judge Ann Frick in Denver District Court.⁷ He pled guilty in this case and was sentenced to two years of probation.⁸

In the probate proceeding, the court held a hearing on October 20, 2014.⁹ Jamison and Toviessi appeared pro se.¹⁰ At the hearing, Toviessi was appointed as the sole personal representative of Ms. Jamison’s estate.¹¹ She was instructed by the court to sell Ms. Jamison’s residence and to divide the proceeds between herself and Jamison.¹²

On October 28, 2014, Respondent filed, in both the criminal and the probate matters, a motion captioned:

“Combined Motion and Petition to 1. Rescind, Vacate, and/or Modify a Permanent Protective Order and the 2-year Probation Agreed to in 14CR01979 Based on Proved Misrepresentations by the Protected Party (Respondent Herein) and 2. Immediately Issue a Court Order Cancelling Previous Orders for Mediation, Etc. and Order the Suspended Former Estate PR Robin Lata J. Tovessi [sic] to Immediately Produce to Court List of Estate Inventory and Other Pertinent Documents Required to Justly Settle Estate and All Other Documents Withheld but Previously Requested by Attorney Asher Ritmiller who Withdrew as Petition’s Counsel” (“October Motion”).¹³

² *Smith v. TCI Cmmc’s, Inc.*, 981 P.2d 690, 695 (Colo. App. 1999).

³ See the People’s petition for further detailed findings of fact.

⁴ Pet. ¶¶ 6-7.

⁵ Pet. ¶¶ 8-9.

⁶ Pet. ¶¶ 4-8, 10-12.

⁷ Pet. ¶¶ 14-15.

⁸ Pet. ¶¶ 18-19.

⁹ Pet. ¶ 20.

¹⁰ Pet. ¶ 21.

¹¹ Pet. ¶ 22.

¹² Pet. ¶ 23.

¹³ Pet. ¶ 24.

This motion included extensive exhibits.¹⁴ Respondent drafted and signed this motion on behalf of her nephew.¹⁵

In the October Motion, Respondent referred to herself as Jamison's "temporary lay-advocate/spokesman."¹⁶ She indicated that she wanted to "explain to the courts the actual cause of wrongful and unjustly contrived [il]legal situations of Justin S. Jamison," which she blamed on Toviessi.¹⁷ Respondent urged both courts to reverse prior orders, which she contended were entered based upon Toviessi's misrepresentations.¹⁸ Also in the October Motion, Respondent asked the criminal court to overturn a protective order entered against Jamison, citing C.R.S. section 13-14-108 in support.¹⁹ She made additional arguments that Jamison was an at-risk adult as defined by C.R.S. section 26-3.1-101(1) and recited various facts supporting her argument.²⁰ Respondent asked the criminal court to vacate Jamison's probation, offering additional evidence and facts in an attempt to demonstrate that her nephew's probation had been entered upon false evidence.²¹

With respect to the probate case, Respondent argued that Toviessi had failed to provide an inventory of Ms. Jamison's estate, despite her nephew's request.²² She asked the probate court to vacate all prior orders, arguing that Toviessi had made misrepresentations.²³ She further demanded that the probate court require Toviessi to provide an accounting and to appoint a "Visitor" or "Special Administrator" to evaluate Jamison.²⁴

On October 30, 2014, the probate court denied the October Motion, notifying Respondent that "Colorado law does not allow the representation of an individual by anyone other than an attorney licensed to practice law in Colorado."²⁵ On November 4, 2014, the criminal court declined to consider Respondent's motion, informing her that under C.R.S. section 12-5-101, a person may not represent another person in state court without a law license issued by the Colorado Supreme Court.²⁶

Despite being warned by these two separate courts that she was not permitted to represent her nephew, Respondent drafted, signed, and filed a second motion on behalf of

¹⁴ Pet. ¶ 25.

¹⁵ Pet. ¶ 57.

¹⁶ Pet. ¶ 26.

¹⁷ Pet. ¶ 27.

¹⁸ Pet. ¶ 28.

¹⁹ Pet. ¶ 29.

²⁰ Pet. ¶¶ 30-31.

²¹ Pet. ¶¶ 32-34.

²² Pet. ¶ 35.

²³ Pet. ¶ 36.

²⁴ Pet. ¶¶ 37-38.

²⁵ Pet. ¶¶ 39-40.

²⁶ Pet. ¶ 42.

her nephew.²⁷ On November 21, 2014, Respondent filed in both courts a “Combined Motion and Petition Regarding Combined Motion and Petition . . . Previously Submitted in October 2014 on Behalf of and By Permission of Justin S. Jamison” (“November Motion”).²⁸ This motion contained Respondent’s contact information on the first page and identified her as Jamison’s “lay-advocate/spokesman.”²⁹ The motion challenged the prior orders entered by the probate and criminal courts.³⁰ Respondent also made references to Jamison’s First Amendment rights to petition the courts, quoted the definitions of “petition” and “practicing law” as defined in *Black’s Law Dictionary*, and quoted from the Fourteenth Amendment.³¹ Respondent further averred that she was not engaging in the practice of law but rather was articulating what her nephew would have said had he been able to do so.³² The November Motion was denied by the probate court on November 26, 2014.³³ The order again informed Respondent that a layperson is not permitted to represent another person in court.³⁴ The criminal court declined to rule on Respondent’s motion.³⁵

Analysis

The Colorado Supreme Court, which has exclusive jurisdiction to define the practice of law within this state,³⁶ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.³⁷ Colorado Supreme Court case law holds that “an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another’s use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action.”³⁸ Phrased somewhat more broadly, a layperson who acts “in a representative capacity in protecting, enforcing, or defending the

²⁷ Pet. ¶ 57; *see also* Amended Answer at 4 (“When Jamison got a copy of his file from Attorney Ritmiller, he forwarded same to me and asked me to help him explain to the court what had happened in each matter.”); July 6 Motion at 2 (stating that as an interested party she filed a pleading on behalf of and at the request of her nephew); July 6 Motion at 3 (“[Respondent] clearly pleaded in writing for HELP! from proper court officers for wrongs perpetrated against DECEASED niece’s estate”); July 6 Motion at 9 (“Jamison gave [Respondent] necessary info and asked his great-aunt, [Respondent] to help him explain various situations – especially PRO and theft charges – to write up and submit Petition. In accordance to Probate Rules, etc. [Respondent] did so.”).

²⁸ Pet. ¶ 43.

²⁹ Pet. ¶¶ 44-45.

³⁰ Pet. ¶ 46.

³¹ Pet. ¶¶ 47-49.

³² Pet. ¶ 50.

³³ Pet. ¶ 52.

³⁴ Pet. ¶ 52.

³⁵ Pet. ¶ 53.

³⁶ C.R.C.P. 228.

³⁷ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982); *see also* *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007) (“Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons.”); *In re Baker*, 85 A.2d 505, 514 (N.J. 1952) (“The amateur at law is as dangerous to the community as an amateur surgeon would be.”).

³⁸ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties” engages in the unauthorized practice of law.³⁹

Here, the allegations deemed admitted establish as a matter of law that Respondent engaged in the unauthorized practice of law by drafting, signing, and filing the two combined motions in the criminal and probate courts on behalf of her nephew. Both motions purported to apply legal principles in support of her demand that her nephew’s criminal probation be vacated based upon alleged false evidence and misrepresentations underlying the sentence. For instance, in the October Motion she argued that her nephew’s protective order should be overturned based upon a Colorado statute and contended that her nephew was an at-risk adult within the definition of C.R.S. section 26-3.1-101(1). Likewise, in the November Motion, Respondent challenged court orders and referenced legal principles, including constitutional law and the unauthorized practice of law rules. In each motion, Respondent attempted to affect her nephew’s “legal rights and duties.”⁴⁰ Moreover, in response to the October Motion, Respondent was told by two judges that she could not represent her nephew by filing pleadings, yet she did so again less than one month later when she drafted and filed the November Motion. Respondent therefore has engaged in the unauthorized practice of law in Colorado. Further, Respondent’s purported defense—that she was an interested party and thus able to file the motions—fails as a matter of law.⁴¹ Accordingly, the PDJ **GRANTS** the People’s motion for judgment on the pleadings.

Costs and Fines

The People ask that Respondent be ordered to pay \$226.00 in costs to cover the People’s administrative and special delivery fees. The PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$226.00 in costs against Respondent.

Turning to the matter of a fine, C.R.C.P. 236(a) provides that if a hearing master finds unauthorized practice of law, the hearing master shall recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each incident of the unauthorized practice of law. The People request that the PDJ recommend the minimum fine of \$250.00. In assessing fines for the unauthorized practice of law, the Colorado Supreme Court previously has examined whether a respondent’s actions were “malicious or pursued in bad faith” and whether the respondent engaged in unlawful activities over an

³⁹ See *Denver Bar Ass’n v. Pub. Utils. Cmm’n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); see also *Shell*, 148 P.3d at 171.

⁴⁰ See *Shell*, 148 P.3d at 171 (quoting *Pub. Utils. Cmm’n*, 154 Colo. at 279, 391 P.2d at 471).

⁴¹ See C.R.S. § 15-10-201(27) (defining “interested person” to include “heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person.”); see also *In re Marriage of Kanefsky*, 260 P.3d 327, 330 (Colo. App. 2010) (concluding that a non-attorney conservator was a statutory legal representative only and could not act as a lawyer on behalf of his wife, a protected person).

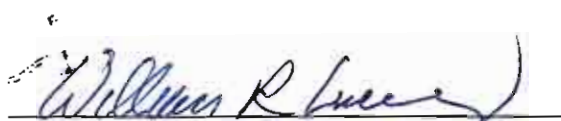
extended timeframe despite warnings.⁴² In this case, the unauthorized activities took place over a limited timeframe, and Respondent has not previously been enjoined from the practice of law. For these reasons, a fine at the lowest end of the range identified in C.R.C.P. 236(a) is appropriate.

IV. CONCLUSION AND RECOMMENDATION

The PDJ **FINDS**, pursuant to C.R.C.P. 8, that the allegations of the People's petition are **ADMITTED**. The PDJ **GRANTS** the People's motion for judgment on the pleadings. The PDJ **VACATES** the prehearing conference set for September 28, 2015, and the hearing date of October 14, 2015.

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law and **ENJOIN** her from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court order Respondent to pay **COSTS** in the amount of \$226.00 and a **FINE** of \$250.00.

DATED THIS 16th DAY OF SEPTEMBER, 2015.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



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⁴² *People v. Adams*, 243 P.3d 256, 267-68 (Colo. 2010).