

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 12, 2015 CASE NUMBER: 2014SA251
Original Proceeding in Unauthorized Practitce of Law, Office of Attorney Regulation Counsel, 2013UP048	
Petitioner: The People of the State of Colorado, v. Respondent: Ann Marie Miller.	Supreme Court Case No: 2014SA251
ORDER OF INJUNCTION	

Upon consideration of the Order Entering Default Judgment Pursuant to C.R.C.P. 55(b) 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, ANN MARIE MILLER, 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, ANN MARIE MILLER is assessed costs in the amount of \$ 91.00. 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 \$1000.00.

BY THE COURT, JANUARY 12, 2015

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN THE 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: ANN MARIE MILLER</p>	<p>Case Number: 14SA251</p>
<p>ORDER ENTERING DEFAULT JUDGMENT PURSUANT TO C.R.C.P. 55(b) AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</p>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on a “Motion for Entry of Default Judgment” filed on November 6, 2014, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Ann Marie Miller (“Respondent”) did not file a response.

I. PROCEDURAL HISTORY

On August 19, 2014, the People filed a “Petition for Injunction” against Respondent, alleging she engaged in the unauthorized practice of law. Respondent responded to the petition on September 8, 2014. On October 9, 2014, the PDJ held a scheduling conference. Mr. Ikeler appeared for the People and Respondent appeared pro se by telephone. Respondent told the PDJ that she intended to default in this matter because she viewed it as a waste of her time. On that same day, the PDJ entered an order directing Respondent to answer the People’s petition by October 31, 2014, in accordance with C.R.C.P. 8(b). Respondent did not file an answer, and instead on November 4, 2014, the parties filed a “Stipulation for Entry of Default.” The PDJ entered default on November 5, 2014, deeming all the allegations in the People’s petition admitted. The People filed the instant motion on November 6, 2014.

II. PETITIONER’S MOTION FOR DEFAULT JUDGMENT

The People have followed the procedure for default judgments set forth in C.R.C.P. 55 and 121 section 1-14 by showing valid service on Respondent; submitting an affidavit indicating that venue is proper and that Respondent is not a minor, an incapacitated person, an officer

of the state, or in the military; and filing a statement of costs. Accordingly, the PDJ **GRANTS** the People's "Motion for Entry of Default Judgment."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PDJ issues the following report to the Colorado Supreme Court pursuant to C.R.C.P. 236(a). The PDJ determines that the allegations of the People's petition, which are summarized below, establish Respondent engaged in the unauthorized practice of law.

Factual Findings

Respondent is not licensed to practice law in Colorado or any other state.¹ She was formally licensed to practice law in Virginia but consented to the revocation of her law license in that state.² In 2012, Tom Roberts filed a breach of contract action in Denver District Court against Jacob Salazar.³ Although Roberts appeared pro se in the litigation, Respondent secretly prepared pleadings, motions, and affidavits for Roberts.⁴ Respondent also advised Roberts to seek default judgment against Salazar.⁵ Roberts sought default judgment based upon Respondent's service of process.⁶ On January 8, 2013, Judge J. Eric Elliff entered default judgment against Salazar for \$695,747.00.⁷

Respondent also instructed Roberts to file an involuntary Chapter 7 bankruptcy petition in the U.S. Bankruptcy Court against Salazar,⁸ and she prepared the bankruptcy petition for Roberts's signature.⁹ Roberts claimed as debt the default judgment entered in the district court.¹⁰ On July 20, 2013, Salazar moved to dismiss the federal bankruptcy case and hired counsel to seek to set aside the default judgment in Denver district court.¹¹

In early August 2013, Salazar's counsel moved to set aside the default judgment, claiming that Salazar had not been served with process and that the affidavits signed by Respondent were false.¹² Judge Elliff held a hearing on August 20, 2013, to determine the sufficiency of process in the default judgment matter.¹³ Respondent attended the hearing with Roberts, and Salazar appeared with counsel.¹⁴ At the hearing, Roberts testified that he prepared the pleadings and affidavits with Respondent's help, she was providing him with

¹ Pet. ¶ 1.

² Pet. ¶¶ 1-4.

³ Pet. ¶ 7.

⁴ Pet. ¶¶ 7-9.

⁵ Pet. ¶ 11.

⁶ Pet. ¶ 10.

⁷ Pet. ¶ 12.

⁸ Pet. ¶¶ 13-15.

⁹ Pet. ¶¶ 29-30.

¹⁰ Pet. ¶ 14.

¹¹ Pet. ¶¶ 17-18.

¹² Pet. ¶¶ 18-19.

¹³ Pet. ¶ 20.

¹⁴ Pet. ¶¶ 21-22.

legal services on a contingency fee basis, she gave him legal advice, and he considered her to be his legal representative.¹⁵ Roberts also told the court that he relied on Respondent to give him direction on the procedural aspects of the litigation.¹⁶ Roberts further informed the court that he had signed an involuntary bankruptcy petition on Respondent's advice, and that Respondent had assisted him initiating the bankruptcy proceedings and prepared any pleadings.¹⁷ Judge Elliff then set aside the default judgment.¹⁸

On October 9, 2013, Judge Bruce Campbell, the judge in the U.S. bankruptcy proceeding, dismissed Roberts's involuntary petition.¹⁹ The judge also entered judgment against Roberts on Salazar's counterclaim for \$30,000.00.²⁰ Roberts then sent a letter to Judge Campbell indicating that he was surprised by the judgment and informing him that he had relied upon the advice of his "paralegal, a former Virginia lawyer."²¹ Through the aforementioned conduct, Respondent engaged in the unauthorized practice of law.²²

Analysis

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,²³ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.²⁴ To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.²⁵

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."²⁶ The Colorado Supreme Court has further determined that one who acts "in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in

¹⁵ Pet. ¶¶ 23-28.

¹⁶ Pet. ¶¶ 27-28.

¹⁷ Pet. ¶¶ 29-30.

¹⁸ Pet. ¶ 31.

¹⁹ Pet. ¶ 32.

²⁰ Pet. ¶ 33.

²¹ Pet. ¶ 34.

²² Pet. ¶ 43.

²³ C.R.C.P. 228.

²⁴ *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.").

²⁵ See C.R.C.P. 201-227.

²⁶ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006); see also C.R.C.P. 201.3(2)(a)-(f) (defining the practice of law).

counseling, advising and assisting that person in connection with these rights and duties” engages in the practice of law.²⁷

Here, Respondent prepared pleadings and affidavits on behalf of Roberts for filing in both the Denver District Court and the U.S. Bankruptcy Court cases.²⁸ She gave Roberts legal advice regarding his cases, including advising him to file a motion for default and to file the involuntary bankruptcy petition. Roberts relied and acted upon Respondent’s legal advice and considered her to be his legal representative. Respondent therefore has engaged in the unauthorized practice of law in Colorado.

Restitution, Fines, and Costs

The People have not requested restitution in this case, so the PDJ makes no recommendation as to an award of restitution. C.R.C.P. 236(a) provides that, if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each such incident. The People ask the Colorado Supreme Court to fine Respondent \$1,000.00; they argue that the maximum fine is appropriate because Respondent filed false affidavits of service of process and then advised Roberts to file a motion for default against Salazar based upon the false affidavits. She then instructed Roberts to file an involuntary bankruptcy petition against Salazar after the default was entered. The People contend that, as a former Virginia lawyer, Respondent knew her affidavits of service were false yet she intentionally defrauded the Denver District Court and the U.S. Bankruptcy Court. The PDJ agrees that a \$1,000.00 fine is appropriate.

The People filed a statement of costs on November 6, 2014, reflecting costs in the amount of \$91.00. The PDJ concludes that the People’s requested costs, which are limited to an administrative fee, are reasonable.²⁹

IV. RECOMMENDATION


The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** 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 enter an order requiring Respondent to pay a **FINE** of \$1,000.00 and to pay **COSTS** in the amount of \$91.00.

²⁷ *Shell*, 148 P.3d at 171 (quotation omitted).

²⁸ See *Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111, 1115-16 (Colo. 1988) (enjoining the respondent from the unauthorized practice of law for drafting pleadings filed in court, which contained legal arguments and authorities).

²⁹ See C.R.S. § 13-16-122 (setting forth an illustrative list of categories of “includable” costs in civil cases).

DATED THIS 9th DAY OF DECEMBER, 2014.


WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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