

Colorado Supreme Court 101 West Colfax Avenue, Suite 800 Denver, CO 80202	
Original Proceeding in Unauthorized Practice of Law 10UPL027	
Petitioner: The People of the State of Colorado, v. Respondent: Eva Rodriguez, d/b/a L&L Immigration Doc Specialist.	Supreme Court Case No: 2010SA380
ORDER OF COURT	

Upon consideration of the 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 said Recommendation of the Presiding Disciplinary Judge shall be, and the same hereby is, APPROVED.

IT IS FURTHER ORDERED that Respondent, EVA RODRIGUEZ, d/b/a L&L IMMIGRATION DOC SPECIALIST, 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 the Respondent, EVA RODRIGUEZ, d/b/a L&L IMMIGRATION DOC SPECIALIST, is to pay Restitution in the amount of \$2,800.00, to Arturo Martinez.

IT IS FURTHER ORDERED that pursuant to C.R.C.P. 236 (a) a fine be imposed against the Respondent in the amount of \$250.00.

IT IS FURTHER ORDERED that costs are assessed against the Respondent, EVA RODRIGUEZ, d/b/a L&L IMMIGRATION DOC SPECIALIST, in the amount of \$1,463.06. Said costs are to be paid to the Office of Attorney Regulation Counsel within (30) thirty days from the date of this order.

BY THE COURT, AUGUST 22, 2011.



Case Number: 2010SA380

Caption: People v Rodriguez, Eva

CERTIFICATE OF SERVICE

Copies mailed via the State's Mail Services Division on August 22, 2011. *J*

Eva Rodriguez, d/b/a L&L
Immigration Doc Specialist
2036 1st Ave.
Space 289 B
Greeley, CO 80631

Honorable William R Lucero
Office of the Presiding Disciplinary
Judge
1560 Broadway, Suite 675
Denver, CO 80202

Kim E Ikeler
OFFICE OF ATTORNEY
REGULATION
1560 Broadway Ste 1800
Denver, CO 80202

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	RECEIVED JUL 15 2011 ATTORNEY REGULATION
Petitioner: THE PEOPLE OF THE STATE OF COLORADO	Case Number: 10SA380
Respondent: EVA RODRIGUEZ, d/b/a L&L IMMIGRATION DOC SPECIALIST	
REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)	

This matter is before the Presiding Disciplinary Judge ("PDJ") on a February 22, 2011, order of the Colorado Supreme Court ("Supreme Court") appointing the PDJ as Hearing Master and directing the PDJ "to prepare a report setting forth findings of fact, conclusions of law, and recommendations."

I. SUMMARY

On June 2, 2011, the PDJ granted a motion filed by Kim E. Ikeler, Office of Attorney Regulation Counsel ("the People"), and entered an order determining as a matter of law that Eva Rodriguez, d/b/a L&L Immigration Doc Specialist ("Respondent"), engaged in the unauthorized practice of law. The PDJ conducted a hearing on June 13, 2011, regarding the appropriate restitution, fine, and costs in this matter. In this report, the PDJ recommends that the Supreme Court enjoin Respondent from the unauthorized practice of law and order Respondent to pay \$2,800.00 in restitution, a fine of \$250.00, and \$1,463.06 in costs.

II. PROCEDURAL HISTORY

The People filed a petition for injunction with the Supreme Court on December 13, 2010. On December 20, 2010, the Supreme Court issued an order to show cause requiring Respondent to answer in writing and show cause within twenty days "why she should not be enjoined from engaging in the unauthorized practice of law in the State of Colorado." When Respondent failed to answer, the People filed a motion to proceed on February 1, 2011. The Supreme Court thereafter issued its order appointing the PDJ as Hearing

Master and directing the PDJ to prepare a report containing findings of fact, conclusions of law, and recommendations.

On February 24, 2011, the PDJ issued an "Order of Hearing Master Pursuant to C.R.C.P. 234-236," directing the People to coordinate the scheduling of an at-issue conference. The PDJ conducted the at-issue conference on March 8, 2011. Mr. Ikeler appeared on behalf of the People and Respondent appeared pro se. During the at-issue conference, a one-day hearing in this matter was scheduled for June 13, 2011. The at-issue conference order directed Respondent to file with the PDJ a response to the People's petition by March 28, 2011.

On April 6, 2011, Respondent filed a letter with the PDJ "in response" to the "request" of the Supreme Court. The letter does not directly respond to the allegations in the People's petition, but rather provides a general account of why Respondent believes she has not engaged in the unauthorized practice of law. She explains that she never stated she was an attorney, she never appeared in or filed motions in federal court, and she told client Victor Martinez she could not assist him in federal court hearings. Attached to the letter is a collection of undifferentiated documents. Respondent's letter effectively denies the People's averment that she promised to attend a hearing with Victor Martinez, then backed out without leaving him time to hire an attorney,¹ but her letter does not otherwise address the averments in the petition.

On April 20, 2011, the People filed "Petitioner's Unopposed Motion for More Definite Statement," which the PDJ granted on April 28, 2011. The People also filed "Petitioner's Motion for Partial Summary Judgment" on April 25, 2011, arguing that Respondent was not legally authorized to undertake certain activities and that she harmed her client. Respondent did not respond to that motion.

The PDJ conducted a status conference on May 4, 2011. Mr. Ikeler appeared for the People and Respondent appeared pro se by telephone. At the status conference, the PDJ advised Respondent twice that she was required to either admit or deny each paragraph of the People's petition. The same day, the PDJ entered an order directing Respondent to answer the People's petition by May 9, 2011, and advising Respondent that her answer must conform to the pleading requirements set forth in C.R.C.P. 8 and 10.

Respondent faxed several hundred pages of documents to the People on May 10, 2011. The People understood these documents to represent Respondent's attempt to answer the petition, and the People provided them to the PDJ. The documents do not admit or deny the numbered averments of the

¹ See Pet. ¶ 17.

People's petition, but rather contain a jumble of largely incoherent statements, as well as Respondent's contract for services, numerous legal forms, and selections from an immigration court practice manual. Respondent made several statements regarding her interactions with Victor Martinez and his brother, Arturo Martinez, including that she did not misrepresent herself as an attorney and that she "did not at any given time state . . . that [she] could get Victor a work authorization." The PDJ construes these statements as denials of the People's allegations that Respondent told Victor Martinez she was an attorney and "that he would be allowed to adjust his status by paying a \$1,000 fine."² But Respondent's documents do not otherwise address the averments in the People's petition.

On May 11, 2011, the People filed "Petitioner's Motion for Recommendation of Entry of an Order of Injunction," to which Respondent did not respond. In their motion, the People argue the PDJ should deem the allegations of the petition admitted pursuant to C.R.C.P. 8(d) and find that Respondent engaged in the unauthorized practice of law.

On May 4, 2011, the People served Respondent with a notice of deposition scheduled for May 16, 2011, and a subpoena *duces tecum*. Respondent did not appear for the deposition. As a result, the People filed that day "Petitioner's Motion for Sanctions Based on Respondent's Failure to Appear for Her Deposition." In that motion, the People requested that the PDJ sanction Respondent by prohibiting her from raising defenses; by entering default judgment for the People; and by recommending the Supreme Court enjoin Respondent from the unauthorized practice of law and order her to pay \$2,800.00 in restitution to Arturo Martinez, a fine of \$1,000.00, and costs in an amount to be determined. Respondent did not respond.

The PDJ conducted another status conference on May 23, 2011, at which Mr. Ikeler and Respondent both appeared. The PDJ indicated that he intended to recommend that the Supreme Court enjoin Respondent from the unauthorized practice of law because Respondent had not filed a legally sufficient answer. The PDJ also found that the trial scheduled for June 13, 2011, should be converted to a hearing on the appropriate award of restitution, fine, and costs. The PDJ told Respondent she had the right to appear at the hearing and encouraged Respondent to speak with a lawyer. On June 1, 2011, the People filed "Petitioner's Request for Recommendation of Restitution, Fine and Costs."

On June 2, 2011, the PDJ granted "Petitioner's Motion for Recommendation of Entry of an Order of Injunction," indicating that the PDJ planned to issue his recommendation to the Supreme Court shortly after the hearing scheduled for June 13, 2011. The PDJ also deemed moot "Petitioner's

² See *id.* ¶ 10.

Motion for Partial Summary Judgment,” the People’s “[proposed] Trial Management Order,” and “Petitioner’s Motion to Compel Respondent to Make Initial Disclosures.” In addition, because the PDJ determined as a matter of law that Respondent engaged in the unauthorized practice of law and because a hearing was scheduled on the topics of restitution, a fine, and costs, the PDJ denied “Petitioner’s Motion for Sanctions Based on Respondent’s Failure to Appear for Her Deposition.”

At the hearing on June 13, 2011, the PDJ heard testimony and considered the People’s exhibits 1-9 and Respondent’s exhibits A-B. The PDJ ordered the People to submit a final statement of costs within seven days of the hearing; the People submitted that statement on June 23, 2011, which they amended on June 24, 2011, requesting that the PDJ recommend an award of \$1,463.06 in costs. In their amended statement of costs, the People note that Respondent had advised them that she planned to file a response to the amended statement of costs. Respondent’s response was due on July 12, 2011, but Respondent did not submit a response by that date.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Unauthorized Practice of Law

The PDJ determined in his order of June 2, 2011, that Respondent engaged in the unauthorized practice of law. The PDJ’s reasoning is set forth below.

C.R.C.P. 235(d) provides that the Colorado Rules of Civil Procedure apply in civil injunction proceedings when they are not inconsistent with the rules governing unauthorized practice of law proceedings. Accordingly, C.R.C.P. 8(d) governs the effect of Respondent’s failure to deny the averments in the People’s petition. C.R.C.P. 8(d) provides: “Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.”

In this matter, the at-issue conference order directed Respondent to file with the PDJ a response to the People’s petition by March 28, 2011. The letter Respondent filed on April 6, 2011, does not admit or deny the averments in the petition. On May 4, 2011, the PDJ ordered Respondent to answer the People’s petition by May 9, 2011, and he advised Respondent that her answer must conform to the pleading requirements set forth in C.R.C.P. 8 and 10. The several hundred pages that Respondent thereafter faxed also fail to specifically admit or deny the averments of the People’s petition. Given Respondent’s continued failure to comply with the PDJ’s specific directions, the PDJ found that affording Respondent yet another opportunity to provide a legally sufficient answer was unlikely to be fruitful. As a result, in his order of June 2, 2011, the PDJ deemed the averments of the People’s petition admitted, with the

exception of the three denials discussed above regarding paragraphs 10 and 17 of the petition.

The PDJ further determined the admitted averments of the People's petition establish that Respondent engaged in the unauthorized practice of law. The Supreme Court exercises exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the state of Colorado.³ "The power of the Supreme Court to determine who should be authorized to practice law would be meaningless if it could not prevent the practice of law by those not admitted to the bar."⁴ The purpose of the Supreme Court's restrictions on the practice of law is to protect the public from receiving incompetent legal advice from unqualified individuals.⁵

The Supreme Court has held 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."⁶ The Supreme Court further determined that one who acts "in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting that person in connection with these rights and duties" engages in the practice of law.⁷

The People aver that Respondent, who is not licensed to practice law, provided legal services to Victor Martinez.⁸ Victor Martinez is a Mexican national who entered the United States without inspection.⁹ One of his brothers, Rodolpho Martinez, a United States citizen, filed a Form I-130 Petition for Alien Relative on Victor Martinez's behalf,¹⁰ which required him to wait until a visa became available before adjusting his immigration status.¹¹ A person in Victor Martinez's circumstances currently must wait until 2016 to obtain a visa.¹² Victor Martinez was arrested in August 2009 and turned over to Immigration and Customs Enforcement ("ICE"); a hearing was then scheduled in his removal case for December 1, 2009.¹³ Arturo Martinez contacted Respondent regarding his brother's predicament, signed an

³ C.R.C.P. 228.

⁴ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 823 (Colo. 1982).

⁵ *Id.* at 826.

⁶ *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).

⁷ *Shell*, 148 P.3d at 171 (quotation omitted).

⁸ Pet. ¶¶ 1, 7-9, 11-16.

⁹ *Id.* ¶ 4.

¹⁰ *See* Ex. 1.

¹¹ Pet. ¶ 5.

¹² *Id.* ¶ 5 n.2.

¹³ *Id.* ¶ 6.

agreement for her services, paid her a fee of \$2,800.00, and gave her an additional \$2,010.00 for filing fees.¹⁴

The People further allege that Respondent selected and prepared for Victor Martinez three forms: a Form I-485 application to register permanent residence and adjust status, a supplement thereto, and a Form 765 employment authorization.¹⁵ She then prepared Form G-28, in which she entered her appearance as Victor Martinez's representative.¹⁶ In August 2009, Respondent sent a letter to an ICE office, enclosing forms and a filing fee and stating she was acting for Victor Martinez as his "Creditable Representative", pursuant to 'CFR 103.2(b) and 103.10.'¹⁷ ICE rejected the Form I-485 application on the grounds that the application was premature and also rejected Form I-765 because Victor Martinez's priority date had not yet arrived.¹⁸ Respondent resubmitted these forms to a different ICE office, which again rejected them.¹⁹ Victor Martinez is now represented by Juliet Gilbert, Esq., and has a hearing in his removal case scheduled for October 2011.²⁰ Respondent has returned the \$2,010.00 in filing fees paid by Arturo Martinez,²¹ but she has not returned the \$2,800.00 fee for her services.²²

In short, the People's admitted averments demonstrate that Respondent, who is not licensed to practice law, "selected and prepared for [Victor] Martinez a Form I-485 application to register permanent residence and adjust status, a supplement to the Form I-485, and a Form 765 employment authorization" without the supervision of an attorney.²³ Accordingly, the PDJ concluded in his June 2, 2011, order that Respondent engaged in the unauthorized practice of law.

Restitution, Fine, and Costs

The People seek a recommendation that the Supreme Court order Respondent to pay \$2,800.00 in restitution, a fine of \$1,000.00, and costs in the amount of \$1,463.06. Each issue is considered in turn below.

The People argue Respondent should be required to pay \$2,800.00 in restitution, based in part upon Arturo Martinez's testimony that he gave Respondent \$2,800.00 in cash for her services. This testimony is corroborated

¹⁴ *Id.* ¶ 7; *see* Ex. 3.

¹⁵ Pet. ¶ 8.

¹⁶ *Id.* ¶ 9.

¹⁷ *Id.* ¶ 12.

¹⁸ *Id.* ¶¶ 13, 14; Exs. 4-6.

¹⁹ Pet. ¶¶ 15, 16.

²⁰ *Id.* ¶ 18.

²¹ *See* Exs. 7, 9.

²² Pet. ¶ 19.

²³ *Id.* ¶¶ 1, 8, 21.

by Respondent's own statements and by exhibit 2, Respondent's contract with Arturo Martinez, on which she noted that \$2,800.00 had been paid in full. In the People's view, Respondent should be required to return Arturo Martinez's entire payment because the work Respondent performed for Victor Martinez was worthless. Citing 8 C.F.R. §§ 245.1(g) & 1245.1(g) and 8 C.F.R. §§ 245.2(a)(5)(ii) & 1245.2(a)(5)(ii), the People explain that, as a precondition to filing a Form I-485, a visa number must be available to an applicant. Visas are currently unavailable for applicants in Victor Martinez's circumstances, that is, a Mexican brother of an adult citizen; visas for such applicants will not become available for several more years. As such, Respondent's filings on behalf of Victor Martinez were premature, leading to their rejection. A licensed attorney, the People assert, would have learned by consulting the applicable State Department visa bulletins²⁴ that such a visa was unavailable for Victor Martinez.

At the hearing, the People further argued that Respondent's unauthorized practice of law renders her entire contract with Arturo Martinez void as a matter of public policy. Consequently, they assert, Arturo Martinez is entitled to full restitution. The People did not cite any legal authority for this proposition, but they contended that allowing Respondent to retain any portion of the \$2,800.00 payment would incentivize the unauthorized practice of law.

Respondent argued at the hearing that she should not be required to return the entire \$2,800.00 payment to Arturo Martinez because she performed a valuable service by filing immigration forms on Victor Martinez's behalf. However, Respondent could provide no legal authority contradicting the People's assertion that Victor Martinez could not legally obtain a visa. Respondent also maintained that she performed several services for Victor Martinez in addition to her filing of immigration forms, such as helping him to post bond and assisting him with a driver's license-related matter.

The People have not provided any authority directly supporting their argument that a person who has engaged in the unauthorized practice of law must make full restitution to clients—even for services separate and apart from those amounting to the unauthorized practice of law—where the underlying contract to perform services is deemed void as a matter of public policy. The PDJ notes, however, that some authority in this and other jurisdictions suggests that an attorney who has rendered services pursuant to an unenforceable or void contract may recover the reasonable value of some services under the principle of quantum meruit.²⁵

²⁴ See Ex. 8.

²⁵ See *Mullens v. Hansel-Henderson*, 65 P.3d 992, 999 (Colo. 2002) ("When an attorney completes the legal services for which he was retained, the fact that the underlying fee agreement was unenforceable does not in itself preclude the attorney from being paid the reasonable value of his services. When a contract fails, equity steps in to prevent one party from taking advantage of another."); *Hyon v. Selten*, 60 Cal.Rptr.3d 896, 903 (Cal. App. 2007)

Setting aside for the moment questions regarding the applicable legal principles in Colorado, the PDJ must recommend a \$2,800.00 award of restitution in this matter because Respondent has not offered evidence regarding the value of any legitimate services she may have provided. Further, she did not show that any portion of Arturo Martinez's \$2,800.00 payment was intended to be applied towards such services. Given the available evidence, the PDJ finds that Respondent should pay \$2,800.00 in restitution to Arturo Martinez.

Next, the People seek imposition of a significant fine in this matter because they allege Respondent caused substantial harm by filing a worthless set of documents on Victor Martinez's behalf and refusing to return Arturo Martinez's \$2,800.00 payment for almost two years. Accordingly, the People request imposition of a \$1,000.00 fine—the maximum fine permitted per incident of the unauthorized practice of law under C.R.C.P. 236(a).

At the hearing, Respondent did not appear to comprehend that the People sought a fine in this matter as a sanction for her unauthorized practice of law; instead, she appeared to believe the People were seeking a fine because she failed to attend her deposition on May 16, 2011. As a result, the only rejoinder she offered to the People's request for a fine was that she had satisfied her duty to attend the deposition by sending the People documents they had demanded.

The PDJ determines that a \$250.00 fine—the minimum fine for each incident of the unauthorized practice of law provided in C.R.C.P. 236(a)—is appropriate here. The PDJ is persuaded that Respondent intended no harm to the Martinezes and that her work was motivated in part by a desire to help them. Moreover, in light of the sizeable award of restitution and costs recommended in this matter, the PDJ finds that a fine of \$1,000.00 would not

("When services are rendered under a contract that is unenforceable as against public policy, but the subject services are not themselves prohibited, quantum meruit may be allowed."); see generally Alex B. Long, "Attorney-Client Fee Agreements that Offend Public Policy," 61 S.C. L. REV. 287, 290 (Winter 2009) (noting the "general rule in favor of permitting lawyers to recover fees, even when their fee agreements clearly offend well-established, strong public policy"); cf. *Reilly v. Korholz*, 137 Colo. 20, 27, 320 P.2d 756, 760 (1958) (holding that, even if provision in stock transfer agreement that required transferor to vote his remaining shares for transferee in board of directors election was void or contrary to public policy, valid portions were still enforceable). But see *In re Bradshaw*, 233 B.R. 315, 330 (Bkrcty. D.N.J. 1999) (requiring bankruptcy petition preparers to disgorge their full fees because their work lacked value and because the fees were fruits of illegal conduct); *Landi v. Arkules*, 835 P.2d 458, 463, 468 (Ariz. App. 1992) (where agreements to pay for assistance in recovering property were unenforceable because they involved improper solicitation of an attorney, an excessive fee, and performance of investigative services by persons not licensed as private investigators, those persons could not recover under quantum meruit—even if they had conferred some benefit on the plaintiff—because quantum meruit does not apply to services performed under an illegal contract).

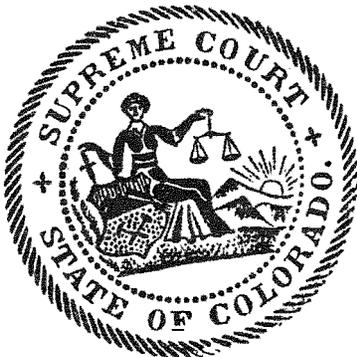
in this instance provide meaningful additional deterrence beyond imposition of the minimum fine.

Finally, the People seek payment of \$1,463.06 in costs from Respondent. At the hearing on June 13, 2011, Respondent said she was willing to pay the People's costs in this matter, though it is somewhat unclear whether she understood the magnitude of the costs at issue. Nevertheless, the People's statement of costs appears reasonable, and the PDJ therefore finds that Respondent should bear the costs of these proceedings.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Supreme Court **ENJOIN** Respondent from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Supreme Court enter an order requiring Respondent to pay **RESTITUTION** to Arturo Martinez in the amount of \$2,800.00, to pay a **FINE** of \$250.00, and to pay **COSTS** in the amount of \$1,463.06.

DATED THIS 15th DAY OF JULY, 2011.




WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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Via Hand Delivery

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