

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 22, 2014 CASE NUMBER: 2014SA56
Original Proceeding in Unauthorized Practice of Law, Office of Attorney Regulation Counsel, 2013UP038	
<b>Petitioner:</b>  The People of the State of Colorado,  <b>v.</b>  <b>Respondent:</b>  Robert P. Schulz.	Supreme Court Case No: 2014SA56
ORDER OF COURT	

Upon consideration of the Petitioner's Motion to Deem Case Submitted on Hearing Masters Report and 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 Motion shall be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that Respondent, ROBERT POLLACK SCHULTZ 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 ROBERT POLLACK SCHULTZ is assessed costs in the amount of \$91.00. Said costs to be paid to the

Office of Attorney Regulation Counsel, within (30) thirty 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, AUGUST 22, 2014

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> ROBERT POLLACK SCHULTZ	Case Number: <b>14SA056</b>
<b>ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS AND          REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</b>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on an order of the Colorado Supreme Court appointing the PDJ as a hearing master pursuant to C.R.C.P. 234(f). Also before the PDJ is “Petitioner’s Motion for Judgment on the Pleadings,” filed by Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”), on April 28, 2014. Robert Pollack Schultz (“Respondent”) responded to the motion on May 12, 2014.

**I. BACKGROUND**

On February 21, 2014, the People filed a “Petition for Injunction,” alleging Respondent engaged in the unauthorized practice of law. Respondent responded to the petition on March 27, 2014. The PDJ held an at-issue conference on April 22, 2014, and set this matter for a one-day hearing to commence on September 3, 2014.

**II. UNDISPUTED MATERIAL FACTS**

The following undisputed material facts are established by the petition and answer filed in this matter. Respondent is not licensed to practice law.<sup>1</sup> Dorothy Kennec was a defendant in a civil case in Clear Creek County District Court, case number 12CV26 (“*Kennec case*”).<sup>2</sup> On November 27, 2012, Respondent moved to intervene in the *Kennec case*, and the motion was granted by the district court on December 19, 2012.<sup>3</sup> On December 4, 2012,

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<sup>1</sup> Petition ¶ 1; Answer ¶ 1.

<sup>2</sup> Petition ¶ 4; Answer ¶ 4.

<sup>3</sup> Petition ¶¶ 5-6; Answer ¶¶ 5-6.

Kennec executed a statutory power of attorney for Respondent, which by its terms authorized Respondent to act as Kennec's agent related to her case.<sup>4</sup>

Respondent prepared and signed four pleadings in the Kennec case as Kennec's attorney-in-fact:<sup>5</sup> (1) "Kennec, Johnson and Schulz's Objection to Court Order Dated February 27, 2013 and Request for Reconsideration of Order," filed on June 26, 2012;<sup>6</sup> (2) "Defendant Johnson and Defendant Kennec's Joint Response to Motion to Compel Response to Plaintiff's Discovery Requests and Request for Protective Order," filed on June 27, 2013;<sup>7</sup> (3) "Kennec, Johnson & Schulz's Joint Motion for Extension of Time," filed on July 9, 2013;<sup>8</sup> and (4) "Motion re: Exemption from Mediation/ADR Order," filed on July 22, 2013.<sup>9</sup> These pleadings were all filed with the combined courts in Clear Creek County.<sup>10</sup>

### III. LEGAL STANDARDS AND ANALYSIS

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. "Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter of law."<sup>11</sup> In deciding such a motion, the court "must construe the allegations of the pleadings strictly against the movant and must consider the allegations of the opposing party's pleadings as true."<sup>12</sup> A C.R.C.P. 12(c) motion should be denied "unless the matter can be finally determined on the pleadings."<sup>13</sup>

The People argue that they are entitled to judgment as a matter of law because Respondent has admitted all of the material facts in the petition, which demonstrate that Respondent engaged in the unauthorized practice of law. In defense, Respondent contends that the definition of the practice of law is unclear and urges the dismissal of this matter.

The undisputed facts show that Respondent prepared, signed, and filed four pleadings in the Kennec case on behalf of Kennec as her attorney-in-fact. However, a power of attorney does not authorize an unlicensed person, like Respondent, to practice law.<sup>14</sup>

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<sup>4</sup> Petition ¶¶ 7-8; Answer ¶¶ 7-8.

<sup>5</sup> Petition ¶¶ 9, 18; Answer ¶¶ 9, 18. Respondent asserts that he was also a named defendant in the Kennec case. Answer ¶ 18.

<sup>6</sup> Petition ¶ 10; Answer ¶ 10.

<sup>7</sup> Petition ¶¶ 12-13; Answer ¶¶ 12-13.

<sup>8</sup> Petition ¶ 14; Answer ¶ 14.

<sup>9</sup> Petition ¶ 16; Answer ¶ 16.

<sup>10</sup> Petition ¶¶ 11, 13, 15, 17; Answer ¶¶ 11, 13, 15, 17.

<sup>11</sup> *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001).

<sup>12</sup> *Abts v. Bd. of Educ.*, 622 P.2d 518, 521 (Colo. 1980).

<sup>13</sup> *Smith v. TCI Commc'ns, Inc.*, 981 P.2d 690, 695 (Colo. App. 1999).

<sup>14</sup> See, e.g., *Christiansen v. Melinda*, 857 P.2d 345, 349 (Alaska 1993) ("A statutory power of attorney does not entitle an agent to appear pro se in his principal's place.") (cited with approval in *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010)); see also *Drake v. Superior Court*, 26 Cal. Rptr. 2d 829, 833 (Cal. App. 1994) (same); *In re Riebel*, 625 N.W.2d 480, 483 (Minn. 2001) (same); *In re Friedman*, 482 N.Y.S.2d 686, 687 (N.Y. Sur. Ct. 1984)

Rather, a power of attorney permits an attorney-in-fact to make decisions regarding litigation, with these decisions implemented by a licensed attorney.<sup>15</sup> The fundamental distinction between attorneys-in-fact and “attorneys at law” has deep roots in our justice system, dating back to fifteenth-century England,<sup>16</sup> and for good reason. To confer upon attorneys in fact the privileges of attorneys at law would vitiate the system of standards governing attorney licensure, since powers of attorney could easily be used to circumvent those standards.<sup>17</sup> The resulting practice of law by persons without appropriate training and skill would deprive members of the public of effective representation, thus occasioning significant public harm.

For this reason, the Colorado Supreme Court has held that a layperson who acts “in a representative capacity in protecting, enforcing, or defending the 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.<sup>18</sup> Likewise, the preparation of legal documents amounts to the practice of law.<sup>19</sup> Accordingly, the PDJ finds that Respondent engaged in the unauthorized practice of law when he prepared, signed, and filed pleadings as Kennec’s attorney-in-fact in the Kennec case.

Finally, although not raised in response to the motion for judgment on the pleadings, Respondent asserted in his answer three affirmative defenses in response to the People’s petition: failure to exhaust administrative remedies; no existence of a lawful order; and a mistaken belief of law.<sup>20</sup> The PDJ agrees with the People that Respondent’s three affirmative defenses are unavailing.

First, the People contend that they have taken the necessary steps to present Respondent’s case to the Unauthorized Practice of Law Committee pursuant to C.R.C.P. 232.5(d)(4) and 234(a) and that the Committee approved this matter for injunction

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(same); *Disciplinary Counsel v. Coleman*, 724 N.E.2d 402, 404 (Ohio 2000) (same); *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. Ct. 1994) (same).

<sup>15</sup> *Riebel*, 625 N.W.2d at 482.

<sup>16</sup> *Coleman*, 724 N.E.2d at 404.

<sup>17</sup> See, e.g., *In re Friedman*, 482 N.Y.S.2d at 687.

<sup>18</sup> See *Denver Bar Ass’n v. Pub. Utils. Cmm’n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); see also *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

<sup>19</sup> *Shell*, 148 P.3d at 175 (“[A]n 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.”); *Title Guaranty Co. v. Denver Bar Ass’n*, 135 Colo. 423, 434, 312 P.2d 1011, 1016 (1957) (holding that preparation of legal documents for others amounts to the unauthorized practice of law); see *Pub. Utils. Cmm’n*, 154 Colo. at 280, 391 P.2d at 471-72 (stating that the practice of law encompasses the preparation for others of “documents requiring familiarity with legal principles beyond the ken of the ordinary layman” and “procedural papers requiring legal knowledge and technique”); see also *Unauthorized Practice of Law Comm. v. Grimes*, 759 P.2d 1, 3-4 (Colo. 1988) (ordering a layperson who had been enjoined from the practice of law to refrain from “prepar[ing] any document for any other person or entity which would require familiarity with legal principles”).

<sup>20</sup> Answer at 5.

proceedings.<sup>21</sup> Nothing before the PDJ indicates that this procedure was ignored. Second, the Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,<sup>22</sup> lawfully restricts the practice of law to licensed lawyers in order to protect members of the public from receiving incompetent legal advice from unqualified individuals.<sup>23</sup> Respondent has violated the rules governing the unauthorized practice of law through his admitted conduct. Third, a mistaken belief of the law is not a defense to a violation of these rules.<sup>24</sup>

#### IV. FINE, COSTS, AND 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. In assessing fines for the unauthorized practice of law, the Colorado Supreme Court has examined whether the respondent's actions were "malicious or pursued in bad faith" and whether the respondent continued to engage in unlawful activities despite warnings to desist.<sup>25</sup> Here, the People seek the minimum fine of \$250.00. Given that this is Respondent's first instance of the unauthorized practice of law, the PDJ accepts the People's recommendation and determines that the minimum fine of \$250.00 is appropriate here.

In unauthorized practice of law matters, the Colorado Supreme Court may assess costs as it deems appropriate, pursuant to C.R.C.P. 237(a). Because the unauthorized practice of law rules do not otherwise speak to the awarding of costs, the Colorado Rules of Civil Procedure also apply.<sup>26</sup> C.R.C.P. 54(d), in turn, provides that "costs shall be allowed as of course to the prevailing party." The People request \$91.00 in costs.<sup>27</sup> The People are the prevailing party here, and the PDJ finds that their requested costs, which are limited to an administrative fee, is reasonable.

Finally, the People do not seek restitution, nor does this appear to be a case in which restitution would be appropriate.

#### V. RECOMMENDATION

Accordingly, the PDJ **GRANTS** "Petitioner's Motion for Judgment on the Pleadings" and **VACATES** the hearing set for September 3, 2014. The PDJ **RECOMMENDS** that the

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<sup>21</sup> People's Mot. for J. on Pleadings ¶ 8.

<sup>22</sup> C.R.C.P. 228.

<sup>23</sup> *Grimes*, 654 P.2d at 826; 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.").

<sup>24</sup> See *People v. Holmes*, 959 P.2d 406, 414 (Colo. 1998) (discussing the deeply-rooted principle that ignorance of the law or mistake of law is no defense to a criminal prosecution).

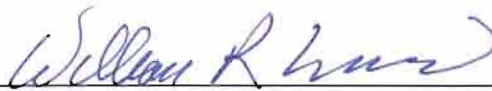
<sup>25</sup> See *Adams*, 243 P.3d at 267-68.

<sup>26</sup> See C.R.C.P. 235(d).

<sup>27</sup> People's Mot. for J. on Pleadings ¶ 12.

Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay a **FINE** of \$250.00 and to pay **COSTS** of \$91.00.

DATED THIS 9<sup>th</sup> DAY OF JUNE, 2014.



WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE



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