

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

CASE NO. 03SA187

ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF
LAW, 02UPL27

RECEIVED

Petitioner:

OCT 18 2004

THE PEOPLE OF THE STATE OF COLORADO,

ATTORNEY
REGULATION

v.

Respondent:

EMMETT SPOONER, SR.

ORDER OF COURT

Upon consideration of the Report Pursuant to C.R.C.P. 236(a)
Re: Findings of Fact, Conclusions of Law and Recommendation For
Final Disposition together with the objection and briefs filed
herein, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the recommendation of the
Presiding Disciplinary Judge is adopted. The Court determines as
a matter of law that the respondent has been engaged in the
unauthorized practice of law. THEREFORE, Respondent EMMETT
SPOONER, SR. is ENJOINED from further conduct found to constitute
the unauthorized practice of law.

IT IS FURTHER ORDERED that Respondent is assessed costs of
these proceedings in the amount of \$378.11. Said costs to be
paid to the Office of Attorney Regulation Counsel, 600 17th St.,
Suite 200-S within thirty days of the date of this order.

BY THE COURT, OCTOBER 18, 2004



Copies mailed via the State's Mail Services Division on 10/18/04 HOP

James Coyle
Deputy Regulation Counsel

Emmett Spooner
9771 Jefferson Hwy. Apt 62
Baton Rouge, LA 70809

Hon. William Lucero
Presiding Disciplinary Judge

SUPREME COURT, STATE OF COLORADO
ORIGINAL PROCEEDING IN THE UNAUTHORIZED
PRACTICE OF LAW BEFORE
THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
600 17TH STREET, SUITE 510-S
DENVER, CO 80202

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MAR 16 2004
ATTORNEY
REGULATION

Petitioner:
THE PEOPLE OF THE STATE OF COLORADO,

Case Number:
03SA187

Respondent:
EMMETT SPOONER, SR.

**REPORT PURSUANT TO C.R.C.P. 236 (a)
RE: FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION FOR FINAL DISPOSITION**

By Order dated October 23, 2003 pursuant to C.R.C.P. 234(f), the Supreme Court referred this matter to Presiding Disciplinary Judge William R. Lucero ("PDJ") to act as Hearing Master for findings of facts, conclusions of law, and recommendations to the Supreme Court on whether the Respondent, Emmett Spooner, Sr., ("respondent") should be enjoined from the unauthorized practice of law.

The Office of Attorney Regulation Counsel ("petitioner") filed a Petition for Injunction with the Supreme Court on July 8, 2003, pursuant to C.R.C.P. 234(a). Petitioner requested that the Supreme Court enjoin respondent from engaging in the unauthorized practice of law in the State of Colorado, assess costs and expenses of the proceedings including reasonable attorneys' fees against respondent and assess restitution against the respondent for losses incurred by client(s) or third parties. The Supreme Court issued an Order to Show Cause, ordering respondent to show cause in writing why he should not be enjoined from engaging in the practice of law in the State of Colorado. Respondent filed a Response to the Order to Show Cause (captioned "First Defense Plead by Respondent") on September 27, 2003, petitioner filed a Reply on October 16, 2003, and respondent filed a Surreply (captioned "Traverse of Reply") on October 30, 2003.

On March 11, 2004, a hearing on the Petition for Injunction was held before Presiding Disciplinary Judge William R. Lucero. James C. Coyle appeared on behalf of petitioner. Respondent did not appear in person; he was incarcerated in a detention facility in Louisiana.

Nevertheless, Respondent received notice of the hearing and was afforded several opportunities to appear and participate in the same. Respondent asserted during the At Issue Conference on November 25, 2003 that he would endeavor to obtain a furlough from the federal detention facility in Louisiana to attend the hearing on March 11, 2004. Judge Keithley ordered respondent to advise the court of the status of his furlough arrangements by a date certain, stating that his failure to do so would waive his rights to be physically present at the hearing. Respondent did not follow the PDJ's order and thus waived his right to be present at the hearing.

The PDJ, did allow the respondent to appear via telephone despite his failure to obtain a furlough. On March 11, 2004 at approximately 9:00 a.m. the court received a call from the facility where defendant was incarcerated. This followed the petitioner's contact with that institution for the purpose of allowing the defendant to participate in the hearing via telephone. Ms. Donetta Rich, an employee of the facility, arranged to have respondent available by phone at the prosecution's request. Ms. Rich was placed on the speakerphone and confirmed her identity and that of the respondent. She further stated Mr. Spooner was present. She stated she was prepared to allow him to use a telephone, and that he was aware of the same. Nevertheless, respondent told Ms. Rich that he did not desired to participate and exercised his "Fifth Amendment" rights when the PDJ attempted to question him.

The PDJ then requested Ms. Rich confirm again that respondent was aware of his right to participate. Ms. Rich confirmed again that respondent did not wish to participate. Accordingly, the PDJ terminated the telephone conference with the facility and proceeded with the hearing. Petitioner's exhibits 1 through 10 were admitted into evidence. Howard J. Beck and Raymond Lee Payne appeared on behalf of the petitioner. Nemiah Wilson, the man who hired respondent to help him with an "investigation" of matters concerning the fee arbitration, appeared at the hearing with his attorney Early Staelin pursuant to a subpoena issued by petitioner. The petitioner objected to Mr. Wilson offering testimony concerning the respondent's activities in this matter. Over the petitioner's objection, Mr. Wilson was allowed to testified on the narrow issue of respondent's participation in the arbitration hearing that gave rise to these proceedings.

I. FINDINGS OF FACT

The facts giving rise to this unauthorized practice of law proceeding arose from respondent's participation in a fee dispute between Mr. Wilson and his former lawyer, Mr. Beck. This matter was set for an arbitration hearing and Wilson hired the respondent to help him prepare for the fee arbitration because Wilson felt that he needed help to present his case against his former lawyer, Mr. Beck.

Mr. Wilson had known respondent for many years and was familiar with the respondent's business, the Joint Center for Constitutional Advocacy and Pro Se Advocacy. Mr. Wilson sought the respondent's assistance in "investigating" Mr. Wilson's prior attorney, Mr. Beck. Wilson felt that Mr. Beck did not properly represent him in a real property dispute and further questioned the fees Beck charged for that representation.

Following Mr. Beck's withdrawal from the matter in which he represented Mr. Wilson, Mr. Beck and Mr. Wilson disputed the amount of attorney's fees Mr. Beck should receive for his work. Mr. Wilson thus sought respondent's assistance in determining the value of the work Mr. Beck had performed. In a letter dated December 18, 2001, Mr. Wilson asked respondent to investigate the underlying case, perform legal research and generally assist in assessing what Mr. Beck had done on the underlying case. See Exhibit 1.

The respondent conducted an investigation and contacted Mr. Beck by telephone to arrange a meeting to discuss Mr. Beck's representation of Mr. Wilson. Mr. Wilson, Mr. Beck, and the respondent met together on February 8, 2002. The meeting lasted approximately two hours. At the outset, Mr. Beck inquired whether respondent was licensed to practice law in Colorado. Respondent confirmed that he was not; rather, he identified himself as a civil rights consultant and a legal researcher.

Respondent outlined his analysis of the claims Mr. Beck had brought on behalf of Mr. Wilson, and the legal issues he thought Mr. Beck should have addressed with regard to the suit. The respondent further rendered advice to Mr. Wilson (in front of Mr. Beck) regarding the client's *pro se* motion for summary judgment in the underlying lawsuit, and whether there had been issues of fraud in the transfer of the property. Respondent had performed an extensive analysis of the deeds on the subject property. Mr. Wilson was absent for at least a portion of the meeting. Respondent prepared minutes from the meeting that included a summary of his legal research on Mr. Wilson's case. The minutes were sent via facsimile to Mr. Beck from "The Joint Center for Constitutional Advocacy and Pro Se Advocacy." Respondent's minutes included the following statements:

- "[O]ur research has found other basis (sic) that we think has merit for additional claims in his law suit";
- "[O]ur research had found that there are other issues which, in our opinion . . . should be included in his case and that in our opinion and when compared to Colorado Law gives Mr. Wilson other legal issues that should give rise to a basis for litigation";
- With regard to the underlying lawsuit, respondent stated "I surmised that failure to make any dilatory exceptions by defendants, certainly waives any defense in those categories of law";

- “We felt from looking at Colorado’s Laws regarding Tenants In Common and how the facts of Mr. Wilson’s case related to [partitioning], we thought that Mr. Wilson had could (sic) prevail on the issue of [partitioning] in that the controversy as it relates to the disputed property [supported] partitioning under Colorado law” (brackets in original). See Exhibit 2.

Later, Mr. Wilson sought respondent’s physical presence and assistance with handling the fee arbitration. The Colorado Bar Association’s Legal Fee Arbitration Committee scheduled the matter to be heard on April 8 and 9, 2003. On March 11, 2002, Art Frazin, who had been designated as the hearing officer for the fee dispute, wrote a letter to Mr. Wilson. In it Mr. Frazin informed Wilson that he would not be able to use the services of the respondent for the arbitration hearing. Further, Mr. Frazin advised that if respondent were to appear as Mr. Wilson’s legal counsel, he would be practicing law in Colorado without a license.” See Exhibit 3. Mr. Wilson responded to Mr. Frazin’s letter and questioned Mr. Frazin’s objectivity suggesting that Frazin was biased in favor of his former lawyer, Mr. Beck. Mr. Frazin subsequently withdrew as arbitrator and Raymond Payne replaced him.

By letter dated March 18, 2002, Mr. Payne advised the parties to the fee dispute – Mr. Wilson and Mr. Beck -- that they could represent themselves or select a licensed Colorado attorney to represent them. See Exhibit 5.

On April 5, 2002, respondent wrote to Mr. Wilson a memorandum on letterhead from “The Joint Center for Constitutional Advocacy and Pro Se Advocacy,” which contained the following conclusions:

- “Further, it is important to conduct this search to determine whether or not Attorney Donald Chad Goldy executed documents in the form of a contract under questionable circumstances which may give rise to an issue of “Fraud”, in his attempt to transfer property belonging to Mr. Nemiah Wilson to Mr. Howard Grenietz.”
- “Our research into this matter continues, I am not of the opinion that this matter comes under any provisions of law which might generate a federal investigation based upon any facial factors which is traditional for Joint Center cases where land ownership, and questions of title and conversion are involved.”

On April 8, 2002, respondent, Mr. Wilson and Mr. Beck appeared before Mr. Payne for the fee arbitration. At the commencement of the hearing, both respondent and Mr. Wilson vigorously asserted that respondent could represent Mr. Wilson as an “advisor.” Mr. Payne again informed Mr. Wilson and respondent that respondent could not represent Mr. Wilson in the fee arbitration. Due to Mr. Wilson’s laryngitis, the matter was continued to May 6,

2002. See Exhibits 7 and 8.

On May 6, 2002, Respondent attended the fee arbitration with Mr. Wilson. He did not speak on Mr. Wilson's behalf; however he did provide what Mr. Payne and Mr. Beck described as written questions to Mr. Wilson. Wilson used these notes to ask questions throughout the fee arbitration hearing. At the conclusion of the hearing, the arbiter awarded of fees to Mr. Beck.

In his responsive pleading to the Order to Show Cause issued by the Supreme Court, respondent stated in part:

- Emmett Spooner's investigation revealed that the lawyer (who is a defendant) in the law suit in court, had filed false claims for one of his partners in the land deal that Mr. Wilson owned and is attempting to share in its proceeds if gone unchecked (sic) with his other partner to the detriment of Mr. Nemiah Wilson. See page 3;
- Respondent was retained to investigate problems with the defendants in a land dispute, and to investigate the failure of his lawyer to properly investigate Mr. Wilson's claims and prosecute said claims in Mr. Wilson's interest. See p. 4;
- [R]espondent always insisted that Mr. Wilson not continue with the fee arbitration, but rather, respondent insisted that Mr. Wilson should obtain legal counsel and sue under the legal mal-practice (sic) doctrine (all based upon facts and information obtained in the investigation). (parenthetical in original) See p.4.

At the hearing in this matter, Mr. Wilson testified that he suffered no harm as a result of respondent's involvement in the case. He believed respondent assisted him in evaluating Mr. Beck's representation of his legal matter and that Mr. Frazin had suggested that Wilson could use respondent during the arbitration proceedings. Mr. Frazin, on the other hand, insisted that respondent could not represent Mr. Wilson because he was not a licensed lawyer.

II. CONCLUSIONS OF LAW

The Supreme Court has the exclusive authority under the Colorado Constitution to regulate and control the practice of law, to prohibit the unauthorized practice of law, and to promulgate rules. See C.R.C.P. 228; *Unauthorized Practice of Law Committee of the Supreme Court v. Prog*, 761 P.2d 1111, 1115 (Colo. 1998). This authority includes the power to prohibit the unauthorized practice of law and to promulgate rules in furtherance of that end. *Id.*; See also Order of Judge Roger L. Keithley dated December 10, 2003, *nunc pro tunc* November 25, 2003 (holding that the Supreme Court has jurisdiction over the unauthorized practice of law and exercises its jurisdiction

through the Office of Attorney Regulation Counsel and the Office of the Presiding Disciplinary Judge).

Petitioner must establish that respondent engaged in the practice of law by a preponderance of the evidence. See § 13-25-127(1) C.R.S. 5 (2003). In this matter, respondent was employed by Mr. Wilson to assist him in fee arbitration with his prior attorney, Mr. Beck. “[G]enerally, one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law.” *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999), citing *Denver Bar Association v. Public Utilities Commission*, 154 Colo. 273, 391 P.2d 467 (1964).

Although respondent was prevented from speaking on Mr. Wilson’s behalf at the fee arbitration, he attended in an advisory capacity. He continued to counsel Mr. Wilson by providing written questions to him that Mr. Wilson repeated in approximately the same form as they were written.

Most telling, however, is respondent’s conduct leading up to the fee arbitration. See *Denver Bar Association v. P.U.C.*, 391 P.2d at 471 (stating that whether one, in representing another before [an administrative body] is practicing law depends upon the circumstances of the particular case under consideration; the character of the act done . . . is the factor which is decisive of whether it constitutes the practice of law).

In preparing an analysis of Mr. Wilson’s lawsuit and Mr. Beck’s representation in the suit, the respondent was practicing law. Respondent conducted extensive legal research on the underlying action giving rise to the fee dispute. He then provided the fruits of his research to Mr. Wilson. He represented Mr. Wilson’s interests at a meeting with Mr. Beck and discussed this analysis; pointing out the shortcomings of Mr. Beck’s work from his perspective and providing alternative claims that should have been raised. He ultimately recommended that Mr. Wilson bring a malpractice action against Mr. Beck based on this analysis. “Analyzing the value of a client’s . . . claim . . . and advising the client about whether to settle for a certain amount are all well within the ambit of the practice of law.” *Unauthorized Practice of Law Committee of Supreme Court v. Prog*, 761 P.2d 1111, 1116 (Colo. 1988); citing *In re Bodkin*, 21 Ill.2d 458, 173 N.E.2d 440, 442 (1961); see generally David Rand, Jr., Annotation, *Nature of Legal Services or Law-Related Services Which May Be Performed for Others by Disbarred or Suspended Attorney*, 87 A.L.R.3d 279 (1978 & 1999 Supp.)(stating that advising clients in a legal matter and negotiating a settlement constitutes the unauthorized practice of law). In the *Prog* case, *supra*, the respondent was found to have engaged in the unauthorized practice of law by researching matters at the request of a third party and advising the third party of the steps to be taken, claims to be

asserted and defenses to be raised. Respondent engaged in the same conduct and while, as in *Prog*, the respondent here did not take the additional step of drafting pleadings, he was employed to render advice on a legal proceeding, he analyzed the proceeding and rendered the legal opinion that Mr. Wilson should pursue a malpractice action against Mr. Beck. This analysis and rendering of an opinion as to what legal actions the third party should take to address his legal concerns constitutes the practice of law.

Mr. Wilson's testimony that he believes respondent's actions taken on his behalf were meritorious, although informative, does not alter a finding that respondent engaged in the unauthorized practice of law. The fact that Mr. Wilson does not believe he suffered injury as a result of respondent's actions is of little if any import to an unauthorized practice of law analysis. "[I]n order to restrain an unlicensed person from practicing a profession it is not necessary to prove irreparable injury or the threat thereof, where the suit is in behalf of the public." *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 312 P.2d 998, 1003 (Colo. 1957). On the contrary, the facts giving rise to this injunction are precisely the reason for prohibiting unlicensed individuals from rendering advise on legal matters to third parties. See *Grimes*, 654 P.2d at 826 (holding that the purpose of the requirement that a person must obtain a license from [the Supreme Court] is to protect the public from unqualified persons who provide incompetent legal services).

The Hearing Master finds that petitioner has met his burden of proof by a preponderance of the evidence and that respondent has engaged in the unauthorized practice of law in the State of Colorado. Further, the respondent should be enjoined from any further unauthorized practice in this state.

C.R.C.P. 237(a) allows for the assessment of costs. Petitioner's Exhibit 10 indicates that petitioner expended \$302.00 (three hundred and two dollars) on this matter. The PDJ expended \$76.11, the cost of the court reporter for a half day of testimony. Petitioner specifically requested that his time not be assessed as costs.

III. RECOMMENDATION

The Presiding Disciplinary Judge William R. Lucero recommends that the Supreme Court of the State of Colorado enjoin Respondent Emmett Spooner, Sr., from the unauthorized practice of law under an Order of the Court, and that the Court further assess costs of these proceedings in the amount of \$378.11 within thirty days of the date of it's Order.

DATED THIS 16TH DAY OF MARCH, 2004.

William R. Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

James C. Coyle Via Hand Delivery
Office of Attorney Regulation Counsel

Emmett Spooner, Sr. Via First Class Mail
Respondent

Mac Danford Via Hand Delivery
Colorado Supreme Court

