

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 30, 2021 CASE NUMBER: 2020SA237
Original Proceeding in Unauthorized Practice of Law, 2019UPL57	
<b>Petitioner:</b>  The People of the State of Colorado,  v.  <b>Respondent:</b>  Dennis Jones.	Supreme Court Case No: 2020SA237
ORDER OF COURT	

Upon consideration of the Petition for Injunction, Order and Rule to Show Cause, Motions, Responses, Reply's, along with Opening, Answer and Reply Briefs filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that DENNIS JONES shall be, and the same hereby is ENJOINED from engaging in the unauthorized practice of law, in the state of Colorado, including engaging in the following activities, whether done separately or in combination:

- Exercising legal judgment or discretion, including the use of any legal skill or knowledge beyond that of a layperson, to advise another person about the legal effect of a proposed action or decision; to advise another person about legal remedies or possible courses of legal action available to that person; to select a legal document for another person or to prepare a legal document for another person, without the supervision of a lawyer, other than solely as a typist or scrivener; to represent or advocate for another

person in a negotiation, settlement conference, mediation, or alternative dispute resolution proceeding; and/or to represent or advocate for another person in a hearing, trial, or other legal proceeding before a tribunal.

- Advertising or holding himself out, either directly or impliedly, in any manner that conveys capability or authorization to provide, without the supervision of a lawyer, services involving the exercise of legal judgment or discretion, as described above;
- Owning or controlling a for-profit entity that provides or offers to provide services involving the exercise of legal judgment or discretion, as described above; and/or
- Soliciting or accepting any fees for services involving the exercise of legal judgment or discretion, as described above.

IT IS FURTHER ORDERED that a fine be imposed in the amount of \$500.00

IT IS FURTHER ORDERED that DENNIS JONES pay Restitution in the amount of \$987.00 to N.M.

IT IS FURTHER ORDERED that DENNIS JONES is assessed costs in the amount of \$449.00. Said costs to be paid to the Office of Attorney Regulation Counsel within (30) days of the date of this order.

BY THE COURT, SEPTEMBER 30, 2021

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO	Case Number: <b>20SA237</b>
<b>Respondent:</b> DENNIS JONES	
<b>REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)</b>	

In this unauthorized practice of law matter, the Office of Attorney Regulation (“the People”) alleges that Dennis Jones (“Respondent”) engaged in the unauthorized practice of law by advertising and holding himself out as capable of completing legal work, advising a party in a domestic relations case about her legal rights, preparing court documents for the party’s signature, and establishing aspects of an attorney-client relationship by charging the party for his services on the party’s behalf. William R. Lucero, the Presiding Disciplinary Judge (“the PDJ”), finds that the People have proved their allegations by a preponderance of the evidence and thus recommends that the Colorado Supreme Court enjoin Respondent from the unauthorized practice of law.

### **I. PROCEDURAL HISTORY**

On behalf of the People, Michele L. Melnick filed a “Petition for Injunction” with the Colorado Supreme Court on July 9, 2020.<sup>1</sup> The Colorado Supreme Court issued an “Order to Show Cause” the same day, to which Respondent responded on September 2, 2020.

Also on September 2, 2020, Respondent moved to dismiss the petition, arguing that the People failed to state a claim; that the definition of the unauthorized practice of law in Colorado is vague; and that the petition failed to identify any harm—and thus any damages—resulting from his actions. Concurrent with his motion to dismiss, Respondent moved to strike portions of the petition, claiming that it failed to establish jurisdiction and that it included what he alleged were immaterial facts. He also moved for judgment on the pleadings, arguing that because there were no genuine issues of material fact, judgment should enter in his favor.

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<sup>1</sup> Gregory G. Sapakoff, Office of Attorney Regulation, entered his appearance in this matter on February 8, 2021.

The People submitted an omnibus response to Respondent's three motions on September 22, 2020. On the same day they also filed a "Motion to Proceed." On October 6, 2020, the Colorado Supreme Court issued an "Order of Court" referring the case to the PDJ to act as hearing master. The following day, Respondent submitted replies in support of his motions as well as "Respondent's Request for Judicial Notice of Colo. R. Civ. P. 201.3(2) Repealed in 2014." On October 21, 2020, the PDJ issued an "Order of Hearing Master Under C.R.C.P. 234-236" and directed the parties to contact the PDJ's administrator to set a remote scheduling conference.

The PDJ denied Respondent's motion to dismiss, motion to strike, and motion for judgment on the pleadings on November 16, 2020, rejecting Respondent's contentions that the repeal of C.R.C.P. 201.3(2) left vague the definition of the practice of law in Colorado, and that the People failed to allege acts that amount to the unauthorized practice of law in Colorado.<sup>2</sup> Two days thereafter, the PDJ held a remote scheduling conference via the Zoom videoconferencing platform and issued a scheduling order, setting the hearing for February 8 and 9, 2021. Respondent then filed "Respondent's Answer to Petition" on November 30, 2020.

On December 28, 2020, Respondent moved for summary judgment. His motion effectively requested reconsideration of the PDJ's order denying his motions to dismiss and for judgment on the pleadings. He also argued that under Colorado case law, a person engages in the unauthorized practice of law only if the person purports or pretends to be a lawyer. After the parties submitted a full suite of briefing, the PDJ denied Respondent's summary judgment motion on January 28, 2021. The PDJ concluded that although Respondent demonstrated the nonexistence of a genuine issue of material fact, he did not prevail on summary judgment as a matter of law.

The PDJ held a remote prehearing conference via Zoom on January 25, 2021. Earlier that day, Respondent had objected to the People's proposed trial management order, which listed him as a witness; he premised his objection on his Fifth Amendment privilege to not testify against himself.<sup>3</sup> At the conference, the PDJ accepted the proposed trial management order. The PDJ advised Respondent that he was entitled to invoke the Fifth Amendment in response to specific questions but that the PDJ could draw an adverse inference against him as to each question he declined to answer.<sup>4</sup> The PDJ also struck

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<sup>2</sup> The PDJ granted Respondent's request to take judicial notice of the repeal of C.R.C.P. 201.3(2). In addition, the PDJ directed Respondent to file an amended motion to strike and an amended motion to dismiss, and to use the initials of the complaining witness and her minor child in place of their names. Respondent filed an amended motion to dismiss and an amended motion to strike on November 30, 2020. The PDJ suppressed the unredacted motions on December 3, 2020.

<sup>3</sup> "Respondent's Objection to TMO Under Fifth Amendment U.S. Constitution Right to Not Testify Against Himself" (Jan. 25, 2021).

<sup>4</sup> See "Order re: Prehearing Conference" (Jan. 25, 2021).

Respondent's eight motions in limine,<sup>5</sup> which were filed out of time, but the PDJ advised Respondent that he could raise similar objections during the hearing.<sup>6</sup>

On February 8, 2021, the PDJ held a remote hearing via Zoom. Sapakoff appeared for the People, and Respondent appeared pro se. The PDJ heard testimony from N.M.—Respondent's former customer—and Sherry Caloia. Respondent did not testify. The PDJ admitted the People's exhibits 1, 4, 7-9, 13, 18, 19, 21, 23, 28, 34, 36-37, 61, and 76.

## II. FINDINGS OF FACT<sup>7</sup>

The People did not call Respondent to testify at the hearing, instead relying on statements in his pleadings. In his opening statement, Respondent affirmed that he did not dispute the facts alleged in the People's petition; he stated that the parties' only disagreement was the legal question of what constitutes the unauthorized practice of law in Colorado. The PDJ's findings of fact thus rely primarily on the evidence adduced and the testimony elicited at the hearing, but the findings also occasionally take note of the contents of Respondent's pleadings as judicial admissions.<sup>8</sup>

Respondent is a resident of California.<sup>9</sup> He is not licensed to practice law in Colorado or any other state.<sup>10</sup> Respondent conducts business as National Legal Assistants, through which he provides law-related services to the public for compensation.<sup>11</sup> Respondent advertises his services online through his website<sup>12</sup> and on Craigslist.<sup>13</sup> Those services include document preparation, legal research, trial preparation, and litigation support.<sup>14</sup> In his advertisements, Respondent identifies himself as an "ABA certified paralegal."<sup>15</sup>

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<sup>5</sup> See "Respondent's Motions in Limine Nos. 1-7" (Jan. 25, 2021) (stricken); "Respondent's Motion in Limine No. 8" (Jan. 25, 2021) (stricken).

<sup>6</sup> See "Scheduling Order Unauthorized Practice of Law" § III.5 (Nov. 18, 2020) (mandating a filing deadline of January 19, 2021, for any prehearing motions other than dispositive motions).

<sup>7</sup> Factual findings are drawn from testimony at the unauthorized practice of law hearing, where not otherwise indicated.

<sup>8</sup> See *Kempton v. Hurd*, 713 P.2d 1274, 1279 (Colo. 1986) (defining a judicial admission as "a formal, deliberate declaration which a party . . . makes in a judicial proceeding for the purpose of dispensing with proof of formal matters or of facts about which there is no real dispute") (internal citations omitted); see also *Skeens v. Kroh*, 489 P.2d 347, 348 (Colo. App. 1971) (finding that specific admissions in pleadings preclude the pleader from later taking a position inconsistent with admitted facts); but see *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988) (noting that a party's admission that no factual dispute exists, which is made for the purposes of summary judgment, terminates on denial of the motion).

<sup>9</sup> Pet. ¶ 1; Answer ¶ 1.

<sup>10</sup> Pet. ¶ 2; Answer ¶ 2.

<sup>11</sup> Pet. ¶¶ 3-4; Answer ¶¶ 3-4.

<sup>12</sup> Pet. ¶ 5; Answer ¶ 5 ([www.nationallegalassistants.com](http://www.nationallegalassistants.com)).

<sup>13</sup> Pet. ¶ 8; Answer ¶ 8.

<sup>14</sup> Pet. ¶ 5; Answer ¶ 5.

<sup>15</sup> Pet. ¶ 8; Answer ¶ 8.

This case concerns Respondent’s work on behalf of N.M. in her custody matter. N.M. testified that she was born and raised in Romania, where she had a child. N.M. and the child’s father were never married. Based on N.M.’s verbal agreement with the father, the child spent time during the summer with her father at his home in California.

In November 2018, N.M. and her minor child moved to Colorado, where N.M. sought child support from the child’s father. At that time, N.M. also tried to petition for an order awarding her full custody of the child. She testified that she was unable to file a petition because she had not yet lived in Colorado for six months. Sometime in spring 2019, N.M. and her child moved to Illinois.

On May 8, 2019, the child’s father filed a petition in Garfield County District Court to allocate parental responsibilities, seeking parenting time with the child during school holidays and summer breaks.<sup>16</sup> N.M. learned of the petition on June 14, 2019, after a hearing in her child support case in Colorado.<sup>17</sup> N.M. testified that Heidi Troxell, counsel for the child’s father, served her with the petition. Other than her action for child support, N.M. had no experience in domestic relations cases in the United States. She reviewed the petition and thought that it asked for the same visitation conditions as those to which she had earlier verbally agreed. She testified that she did not know what to do about the petition.

N.M. had first contacted Respondent in advance of the child support hearing—in mid-June 2019—while she was looking for a lawyer to help transfer her child support case to Illinois and to help her apply there for full custody of the child. N.M. said she made “hundreds of phone calls” to lawyers but no one would help her. After her husband found Respondent’s advertisement on Craigslist, she called Respondent and asked whether he could assist with her legal matters. She testified that Respondent “was the only one who actually listened to me.” Respondent told N.M. that he could help her. The only thing he said he could not do, she recalled, was to appear in court for her.<sup>18</sup> She explained to Respondent that she had “no idea what to do and what to say” in court; he replied that he could guide her by telling her what to expect and what to say. N.M. testified that she understood Respondent was a paralegal but that she did not know what a “paralegal” meant, other than that a paralegal could not represent her in court.

N.M. hired Respondent after the child support hearing, in early-to-mid July 2019. Respondent asked for a retainer. On July 25, 2019, N.M. paid Respondent \$800.00 from her PayPal account.<sup>19</sup> Respondent then instructed N.M. to provide him with her legal documents, and he asked her to complete a questionnaire so that he would “have the necessary information to complete all the forms to open [her] case.”<sup>20</sup> N.M. testified that

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<sup>16</sup> Ex. 13 at 46.

<sup>17</sup> See Ex. 21 at 101.

<sup>18</sup> Respondent admits that “he boasts to everyone he has the same skillset of attorneys and can ‘do everything a lawyer could do’. . . . [H]e informs all potential clients that he cannot ‘show up in court,’ and that they will be representing [themselves] at all times.” Answer ¶ 12.

<sup>19</sup> Ex. 9 at 38; Ex. 76 at 332.

<sup>20</sup> Ex. 61 at 233.

Respondent said he could help her to move the custody case to Illinois and close the matter in Colorado.

On August 1, 2019, Respondent filed N.M.'s response to the father's petition in Garfield County District Court.<sup>21</sup> Respondent had prepared the document, which was signed by N.M. and which indicated that she did not have a lawyer.<sup>22</sup> The response requested that the court deny the petition, cited C.R.S. § 14-13-102(7)(a),<sup>23</sup> and asserted a jurisdictional defense based on the statute's definition of "home state." The response read in part:

The general rule is that Colorado state courts have authority to hear a custody case if Colorado is considered the child's "home state." A child's "home state" is generally the state where the child has most recently lived with a parent (or a person acting as a parent) for at least 6 consecutive months.

....

The minor child must have resided in the State of Colorado for 6 months. [Mother] did not arrive in Colorado until 11/13/2018. Six months from 11/13/2018 is May 13, 2019. [Father] FILED his Petition for Allocation of Parental Responsibilities on May 8, 2019, which is five days too early . . . . *In other words, [Father] failed to satisfy the 6-month rule by filing 5 days too soon.* [Mother] also sets forth a timeline for the Court's convenience in Exhibit A and B attached hereto and incorporated herein.<sup>24</sup>

N.M. testified that she did not ask Respondent to include the legal citation, saying that she had "no idea [what the statute meant]" and thus could not have possibly asked him to put it in the response. Although N.M. and Respondent discussed substantive aspects of the pleading—she recalled, for instance, calculating for Respondent the dates she resided in Colorado—she did not know what information to include in the response. Instead, she testified, Respondent directed her "to write [her] story in detail—that this is all that [she] did—and he took care of the rest." Respondent, she believed, would prepare the document correctly because "he seemed very knowledgeable, he seemed like he [knew] what he was

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<sup>21</sup> Ex. 21. Respondent also served the document on Troxell via an email in which he identified himself as "Paralegal to [N.M.]." Ex. 61 at 232.

<sup>22</sup> Respondent has acknowledged that "[he] completed and filed a family law custody issue response for [N.M.] . . ." Pet. ¶ 13; Answer ¶ 13; *see also* Pet. ¶ 14 (alleging that "Respondent prepared and filed a Response to the Petition to Modify Allocation of Parental Responsibilities with a 17 page affidavit attached as Exhibit 1 on N.M.'s behalf. The Response was signed by N.M. and stated that she was self-represented."); Answer ¶ 14 (admitting same).

<sup>23</sup> "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least one hundred eighty-two consecutive days immediately before the commencement of a child custody proceeding. . . ." Respondent reproduced the statute verbatim in the response. Ex. 21 at 97.

<sup>24</sup> Ex. 21 at 97. Exhibit A to the response is the timeline of N.M.'s residency in Colorado, Ex. 21 at 100-01; exhibit B to the response is a copy of N.M.'s residential lease in Illinois, Ex. 21 at 102-04.

talking about, and I had no idea, so I trusted him.” Filed with the response was a seventeen-page affidavit signed by N.M.<sup>25</sup> N.M. testified that Respondent prepared the affidavit based on her written story, from which he took details, correcting and editing her narrative to make the affidavit look “the way the court wanted it to look.”

In late July 2019, Troxell sent N.M. a notice for a telephonic conference.<sup>26</sup> At the conference, to be held on August 5, 2019, the parties were to schedule a hearing in the custody matter. N.M. sent a copy of the notice to Respondent. On August 3, 2019, Respondent emailed N.M. instructions and a script to recite at the conference, which read as follows:

The Court has No Jurisdiction over me or the child in this matter, and I will not appear on any date. On Thursday, August 1, 2019, I filed a Response to the Petition for Allocation of Parental Responsibilities, and a supporting Affidavit. The response papers show the child resided in Colorado for 162 days only, and therefore the Petition fails to establish jurisdiction as a matter of law. The Court must DISMISS this case on the ground there is no jurisdiction. I will be filing for child support in the local court of proper jurisdiction in Illinois, and I will also be filing a RESTRAINING ORDER against the father for threatening me with physical harm.<sup>27</sup>

In the same email, Respondent further instructed N.M.:

After you say [the script], then shut up. This script is all you have to say, and nothing more. At this juncture in time, you will [simply] rest on the papers you filed. You are not obligated to argue the law, and I advise you try to do everything you can to simply remain silent. . . . It is the Petitioner’s problem to prosecute his case.

You should do nothing more other than be gracious enough to answer any questions. Do NOT argue the merits of your case, or the contents of the papers you filed.<sup>28</sup>

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<sup>25</sup> Ex. 19. After he filed the affidavit, Respondent served the document on Troxell. Ex. 61 at 232.

<sup>26</sup> Ex. 18 at 77.

<sup>27</sup> Ex. 7 at 27; Ex. 61 at 229; *see also* Ex. 9 at 37 (billing entry of August 3, 2019: “Prepare a lengthy email message to client to brief her on how to prepare for telephone call with the Garfield County Courthouse, including providing her a script, and answering all her questions.”).

<sup>28</sup> Ex. 7 at 27-28; Ex. 61 at 229-30. Respondent included similar guidance in texts to N.M., telling her that “it becomes the problem of the petitioner [to] enforce the order because you are going to proceed [with] filing in Illinois, and Illinois law controls in Illinois. The Colorado court can say whatever it wants, but the petitioner will have a piece of paper that is unenforceable.” Ex. 76 at 337-39.

Respondent also told N.M. that “[a]fter this telephone call, you’re done. You informed the court during this telephone call that you will not appear for any hearings or proceedings in this case. So, you’re done with this Colorado case.”<sup>29</sup> He raised the prospect of an adverse judgment, telling N.M., “[i]f the court wants to rule against you, then you will appeal.”<sup>30</sup> Respondent then discussed with N.M. the next steps for opening her child support case in Illinois and obtaining a restraining order against the child’s father. Respondent assured N.M. that she would “receive favorable orders from the Illinois court” after which he and N.M. would file a notice of foreign decree in the Colorado court.<sup>31</sup>

N.M. thought she would be speaking with a judge at the telephone conference. She said that the judge was not at the conference, however, and the judge’s assistant set the hearing for August 19, 2019. N.M. emailed Respondent after the conference, writing, “I told them I won’t go [to the hearing] but nobody listen[ed] to me and set it anyway.”<sup>32</sup> Respondent replied to N.M.’s email, assuring her that “[i]f the hearing remains on [the] calendar for August 19, 2019, then the court will likely dismiss the case at that time.”<sup>33</sup> N.M. testified that she also spoke with Respondent, who reassured her that the court did not have jurisdiction and that N.M. was “done with Colorado.” N.M. understood from Respondent that she did not need to attend the hearing<sup>34</sup> and that the case would be closed. On August 10, 2019, Respondent billed N.M. \$1,129.40, consisting of a flat fee of \$500.00 for preparing the response to the custody petition; \$486.40 for his services, charged at \$80.00 per hour; and \$143.00 for filing fees.<sup>35</sup>

Leading up to the date of the hearing, N.M. did not receive any communication from the court dismissing the case. Relying on Respondent’s advice, she did not attend the hearing, during which the court granted the father’s petition. The court entered a temporary parenting plan on August 20, 2019, awarding the father primary custody and restricting N.M. to supervised parenting time in Santa Rosa, California, where the father resided.<sup>36</sup>

N.M. first learned that the court had issued an order when she called the court to inquire if the case had been closed. Soon after, Illinois law enforcement came to her home, informed her of the order, and suggested that she obtain counsel. On August 26, 2019,

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<sup>29</sup> Ex. 7 at 28; Ex. 61 at 230.

<sup>30</sup> Ex. 76 at 337. Respondent also counseled N.M. that “after the [hearing on August] 19th, opposing counsel Heidi [Troxell] will send you an updated notice on what the latest decision is by the court. If for some reason it is a bad one you can appeal.” Ex. 61 at 231.

<sup>31</sup> Ex. 7 at 28; Ex. 61 at 230.

<sup>32</sup> Ex. 8 at 30; Ex. 61 at 235.

<sup>33</sup> Ex. 8 at 30; Ex. 61 at 235.

<sup>34</sup> Respondent communicated to N.M. multiple times that she did not need to appear for the hearing on August 19, 2019. In his email of August 3, 2019, he told N.M. that “[a]ll you have to do is inform the court that you will not attend any future hearings.” Ex. 7 at 27; Ex. 61 at 229. After the telephone conference, he belatedly advised N.M. that “[i]f the judge is not on the phone, then you have nothing to say to anyone other than you’re not appearing.” Ex. 8 at 29; Ex. 61 at 234.

<sup>35</sup> Ex. 9.

<sup>36</sup> Ex. 23 at 114.

Troxell emailed a copy of the order to N.M. and informed her that she could “face kidnapping charges or a warrant for [her] arrest” if she did not cooperate with the order.<sup>37</sup>

On September 4, 2019, N.M. texted Respondent that he had provided an incorrect address in the response to the petition and that she had been accused of providing a fake address.<sup>38</sup> She wrote, “I am in serious trouble because I did not go to the court date and now [I am accused] of perjury and I am in[n]ocent.”<sup>39</sup> The next day, Respondent offered to write an affidavit explaining the error.<sup>40</sup>

N.M. testified that she did not seek further advice from Respondent. Instead, she connected with Colorado lawyer Sherry Caloia, who agreed to help settle the custody issue. N.M. forwarded to Caloia the emails and texts she had exchanged with Respondent.<sup>41</sup> Caloia entered her appearance in the custody case in September 2019. According to Caloia, the case was “a mess,” as the Garfield County District Court’s temporary orders exceeded even the parenting time allocation for which the father had originally petitioned. Caloia said that because N.M. had failed to appear at the hearing on August 19, 2019, the court appeared to have given the father “whatever he asked for.” Caloia related that the child remained with N.M. and that the parties attempted to negotiate a settlement. The negotiations were unsuccessful, however, and Caloia filed an emergency motion to reconsider and vacate the temporary orders.<sup>42</sup> After full briefing,<sup>43</sup> the court denied the emergency motion on September 10, 2019.<sup>44</sup> Caloia testified that N.M.’s failure to attend the hearing on August 19, 2019, was “fatal” to her emergency motion.

### **III. CONCLUSIONS OF LAW**

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law in Colorado,<sup>45</sup> restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.<sup>46</sup>

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<sup>37</sup> Ex. 4.

<sup>38</sup> Ex. 76 at 345; *see also* Ex. 21 at 98 (petition response listing an incorrect address for N.M.).

<sup>39</sup> Ex. 76 at 345.

<sup>40</sup> Ex. 76 at 346.

<sup>41</sup> Ex. 61.

<sup>42</sup> Ex. 28.

<sup>43</sup> *See* Ex. 34 (“Response to Emergency Motion to Reconsider and Vacate Temporary Orders” (Sept. 9, 2019)) and Ex. 36 (“Reply to Response Re Emergency Motion” (Sept. 10, 2019)). The response alleged that N.M. submitted a fake address to the court in her response to the petition. Ex. 34 ¶ 6.

<sup>44</sup> Ex. 37.

<sup>45</sup> C.R.C.P. 228.

<sup>46</sup> *See People v. Adams*, 243 P.3d 256, 265 (Colo. 2010) (noting that the “lay exercise of legal discretion is prohibited because of potential harm to the public”) (citation omitted); *see also Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982) (“The purpose of the bar and [the Colorado Supreme Court’s] admission requirements is to protect the public from unqualified individuals who charge fees for providing incompetent legal advice.”).

Colorado jurisprudence defines the practice of law to include counseling, advising, and assisting another in connection with that party's legal rights and duties.<sup>47</sup> More broadly, the practice of law involves the exercise of professional judgment, calling upon "legal knowledge, skill, and ability beyond [that] possessed by a layman."<sup>48</sup> A layperson "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."<sup>49</sup> Providing advice regarding legal matters and drafting pleadings for filing in court are prohibited activities because they involve the lay exercise of legal discretion.<sup>50</sup> Indeed, "one of the touchstones of Colorado's ban on the unauthorized practice of law is an unlicensed person offering advice or judgment about legal matters to another person for use in a specific legal setting."<sup>51</sup> An unlicensed person likewise is prohibited from establishing aspects of an attorney-client relationship.<sup>52</sup>

Here, the evidence shows that Respondent offers to perform, for compensation, legal services for others, including document preparation, legal research, trial preparation, and litigation support. Respondent promotes his services via his website and through Craigslist, where N.M.'s husband found Respondent's advertisement.

After he agreed to help N.M. in her legal matters, Respondent engaged in the unauthorized practice of law by preparing the petition response for N.M.'s signature without the supervision of a lawyer. The response purports to apply legal principles: it challenges the court's jurisdiction in the case by citing Colorado's home state statute and by presenting facts organized to support the jurisdictional argument. Respondent devised the strategy employed in the response; N.M. did not know what legal arguments or citations the response should include, and she did not direct Respondent as to how to prepare the response. Further, Respondent exercised legal discretion by curating N.M.'s written factual

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<sup>47</sup> *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (citing *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 391 P.2d 467, 471 (Colo. 1964)).

<sup>48</sup> *In re Swisher*, 179 P.3d 412, 417 (Kan. 2008); see also *Adams*, 243 P.3d at 266 (noting that prohibited activities that involve the lay exercise of legal discretion include giving advice to others about their legal matters and the preparation of court pleadings on behalf of others).

<sup>49</sup> *Shell*, 148 P.3d at 171.

<sup>50</sup> See *Adams*, 243 P.3d at 267 (finding that the nonlawyer respondent engaged in the unauthorized practice of law when he pursued in court bankruptcy claims assigned to him by the claim holders and exercised legal discretion by formulating the legal and factual basis for the claims); see also *Grimes*, 759 P.2d at 3-4 (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"); see also *Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111, 1113 (Colo. 1988) (concluding that a nonlawyer engaged in the unauthorized practice of law when he drafted various documents and pleadings for borrowers to file in a Rule 120 case and later advised and assisted them to file additional court actions).

<sup>51</sup> *Shell*, 148 P.3d at 174 (citing *Denver Bar Ass'n*, 391 P.2d at 471).

<sup>52</sup> See *Adams*, 243 P.3d at 266-67 (finding that a nonlawyer's "Agreement for Collection Services" reflected aspects of an attorney-client relationship by requiring payment for respondent's time if the client decided to dismiss his services).

account to draft an affidavit for her signature in support of the response. He filed the affidavit with the response and served them on the other party.

Respondent also engaged in the unauthorized practice of law by assisting N.M. in connection with her legal rights. He told her that he could help her move her custody case to Illinois and close the Colorado case. He answered her questions about the telephone setting conference and prepared a script containing legal concepts for her to read to the court. Respondent later advised N.M. about what she should and should not say during the conference. He counseled her that the court did not have jurisdiction in the custody case, that she would be “done with this Colorado case” after the telephone conference, and that the father had the burden to prosecute the custody case. Respondent gave N.M. assurances about the strength of her legal position, telling her that she would receive “favorable orders” from the Illinois court, which would render a Colorado order no more than “a piece of paper that is unenforceable.” He advised her that she need not appear at the custody hearing. He also discussed with her a future plan of action for her legal matters, which included appealing any unfavorable Colorado ruling, petitioning in Illinois for a child support order and a restraining order against the father, and filing a notice of foreign decree in Colorado.

The arrangement between Respondent and N.M. bore hallmarks of an attorney-client relationship. N.M. paid Respondent a retainer, against which he charged his services and court fees. Because Respondent “seemed very knowledgeable, . . . like he [knew] what he was talking about,” N.M. trusted his work and his counsel.

The PDJ finds that through these several acts—advertising or holding himself out as capable of completing legal work on another’s behalf; preparing legal pleadings for N.M.’s use in a judicial proceeding; exercising legal judgment or discretion by giving N.M. legal advice and counseling her about her legal rights and duties; and establishing aspects of an attorney-client relationship by charging N.M. for his legal work—Respondent engaged in the unauthorized practice of law.

At the hearing, Respondent raised a legal defense that he first made in his summary judgment motion: he contended that under Colorado case law, as interpreted through the lens of now-repealed C.R.C.P. 201.3, a person engages in the unauthorized practice of law only when the element of representation is present, which Respondent has interpreted to mean the act of purporting or pretending to be a lawyer. Because the People do not allege that Respondent ever purported or pretended to be a lawyer for N.M., he argued, their petition is legally deficient. But as the PDJ already held when denying Respondent’s motions to dismiss and for summary judgment, a finding of the unauthorized practice of law does not depend on the act of pretending or purporting to be a lawyer, appearing in court, or signing

a pleading.<sup>53</sup> Accordingly, the PDJ concludes that the People have established that Respondent engaged in the unauthorized practice of law.

#### IV. FINE, RESTITUTION, AND COSTS

C.R.C.P. 236(a) provides that if a hearing master finds a respondent has engaged in the 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. 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 engaged in unlawful activities over an extended timeframe despite warnings.<sup>54</sup>

The People request that the PDJ recommend the maximum per-incident fine of \$1,000.00 based on the nature of Respondent's conduct and his refusal to recognize the wrongful nature of his conduct. Alternatively, the People say, the minimum fine of \$250.00 for each alleged act of Respondent's unauthorized practice of law would also be appropriate.

Here, there is no evidence that Respondent acted in bad faith or with malice. Further, his involvement in N.M.'s case occurred over the limited period of mid-July to early August 2019. Although Respondent engaged in multiple prohibited acts, the PDJ finds that each one was interrelated, comprising a single incident of the unauthorized practice of law.<sup>55</sup> Though Respondent's many acts unambiguously constituted the unauthorized practice of law,<sup>56</sup> the PDJ finds that they were somewhat mitigated by Respondent's sincere attempt to help N.M. with her case. Accordingly, the PDJ recommends that Respondent be fined \$500.00 for engaging in the unauthorized practice of law.

The People also request an award of restitution to N.M. The People's request is supported by N.M.'s testimony that she paid Respondent a retainer, N.M.'s PayPal transaction history showing that she paid Respondent \$1,130.00 in three installments,<sup>57</sup> and

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<sup>53</sup> "Order Granting Respondent's Request for Judicial Notice, and Denying Respondent's Motion to Dismiss, Motion to Strike, and Motion for Judgment on the Pleadings" at 3-5; "Order Denying Respondent's Motion for Summary Judgment Under C.R.C.P. 56" at 8-10.

<sup>54</sup> *Adams*, 243 P.3d at 267-68.

<sup>55</sup> *See id.* at 267 (accepting the PDJ's finding that the respondent engaged in five incidents of the unauthorized practice of law by representing five different individuals in bankruptcy court regarding their respective claims).

<sup>56</sup> As a point of contrast to this case, the respondent in *Adams* had concluded that he could legally receive assignments of debts and pursue claims for those debts in court, and he litigated his position through federal district court. 243 P.3d at 259-60. In analyzing whether the respondent's activities constituted the unauthorized practice of law, the *Adams* majority noted the absence of direct precedent in Colorado, *id.* at 266, and the dissent disagreed that the conduct at issue in the case was unlawful. *Id.* at 268.

<sup>57</sup> Ex. 76 at 332.

Respondent's invoice reflecting \$1,129.40 in charges for services and filing fees.<sup>58</sup> The invoice amount includes \$143.00 in court filing fees, for which the People do not seek restitution.<sup>59</sup> Because the Colorado Supreme Court has deemed it appropriate to award restitution of any fees received for the unauthorized practice of law,<sup>60</sup> the PDJ finds that restitution in the amount of \$987.00 is warranted here.<sup>61</sup>

Finally, on February 12, 2021, the People filed "Petitioner's Statement of Costs," requesting \$449.00 in costs to cover the People's administrative fee and service of process fees. Respondent did not file a response objecting to the People's request. Relying on C.R.C.P. 237(a), the PDJ considers the sum reasonable and therefore recommends that the Colorado Supreme Court assess \$449.00 in costs against Respondent.

## V. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law and **ENJOIN** Respondent from the unauthorized practice of law, including engaging in the following activities, whether done separately or in combination:

- Exercising legal judgment or discretion, including the use of any legal skill or knowledge beyond that of a layperson, to advise another person about the legal effect of a proposed action or decision; to advise another person about legal remedies or possible courses of legal action available to that person; to select a legal document for another person or to prepare a legal document for another person, without the supervision of a lawyer, other than solely as a typist or scrivener; to represent or advocate for another person in a negotiation, settlement conference, mediation, or alternative dispute resolution proceeding; and/or to represent or advocate for another person in a hearing, trial, or other legal proceeding before a tribunal.
- Advertising or holding himself out, either directly or impliedly, in any manner that conveys capability or authorization to provide, without the supervision of a lawyer, services involving the exercise of legal judgment or discretion, as described above;
- Owning or controlling a for-profit entity that provides or offers to provide services involving the exercise of legal judgment or discretion, as described above; and/or

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<sup>58</sup> Ex. 9.

<sup>59</sup> Ex. 9 at 38.

<sup>60</sup> *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering a nonlawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

<sup>61</sup> See C.R.C.P. § 13-16-122 (setting forth an illustrative list of categories of "includable" costs in civil cases).

- Soliciting or accepting any fees for services involving the exercise of legal judgment or discretion, as described above.

The PDJ also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay **RESTITUTION** of \$987.00 to N.M; to pay a **FINE** of \$500.00; and to pay **COSTS** of \$449.00.

Either party may file objections to this report with the Colorado Supreme Court within twenty-eight days of today's date or as otherwise ordered by the Colorado Supreme Court.<sup>62</sup>



DATED THIS 3<sup>rd</sup> DAY OF MARCH, 2021.

*William R. Lucero*

WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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<sup>62</sup> C.R.C.P. 236(b).