

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 19, 2014 CASE NUMBER: 2013SA242
Original Proceeding in Unauthorized Practice of Law, Office of Attorney Regulation Counsel, 13UPL12	
Petitioner: The People of the State of Colorado, v. Respondent: Thomas Braden Austin.	Supreme Court Case No: 2013SA242
ORDER OF COURT	

Upon consideration of the Order Entering Default Judgment Pursuant to C.R.C.P. 55(b) and Report of Hearing Master Pursuant to C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that THOMAS BRADEN AUSTIN 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, THOMAS BRADEN AUSTIN is assessed costs in the amount of \$91.00. Said costs to be paid to the Office of Attorney Regulation Counsel within ninety (90) 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, FEBRUARY 19, 2014.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	<p>RECEIVED</p> <p>JAN 10 2014</p> <p>REGULATION COUNSEL</p>
<p>Petitioner: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: THOMAS BRADEN AUSTIN</p>	<p>Case Number: 13SA242</p>
<p>ORDER ENTERING DEFAULT JUDGMENT PURSUANT TO C.R.C.P. 55(b) AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</p>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on “Petitioner’s Proposed Recommendation Regarding Restitution, a Fine, and Costs,” filed on December 13, 2013, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Thomas Braden Austin (“Respondent”) did not file a response. Also before the PDJ is an “Affidavit of Kim E. Ikeler,” filed on January 2, 2014.

I. PROCEDURAL HISTORY

The People filed a “Petition for Injunction” against Respondent on September 19, 2013, alleging he engaged in the unauthorized practice of law. The Colorado Supreme Court issued an “Order and Rule to Show Cause” on September 27, 2013. Respondent did not respond to the petition or the Colorado Supreme Court’s order. On November 6, 2013, the Colorado Supreme Court referred this matter to the PDJ for “findings of fact, conclusions of law, and recommendations” pursuant to C.R.C.P. 234(f) and 236(a).

The PDJ issued an order to show cause on November 12, 2013, directing Respondent to answer the People’s petition by November 26, 2013. Respondent did not answer the petition by that date or otherwise respond to the PDJ’s show cause order.

On December 2, 2013, the PDJ entered default, deeming admitted the allegations in the People’s petition, including the allegation that Respondent engaged in the unauthorized practice of law.¹ The PDJ also ordered the People to file a recommendation as to the

¹ See C.R.C.P. 8(d); *Orebaugh v. Doskocil*, 145 Colo. 484, 487-88, 359 P.2d 671, 673 (1961) (noting that a defendant’s failure to answer within the required time constituted his admittance of the allegations of the complaint, which no longer needed to be proved); see also *Denman v. Burlington N. R.R.*, 761 P.2d 244, 247 (Colo.

appropriate fine and restitution and their statement of costs in accordance with C.R.C.P. 55(b) and 121 section 1-14.

II. DEFAULT JUDGMENT

The People have followed the procedure for default judgments set forth in C.R.C.P. 55 and 121 section 1-14 by showing valid service on Respondent; submitting an affidavit indicating that venue is proper and that Respondent is not a minor, an incapacitated person, an officer of the state, or in the military; and filing a statement of costs.² Accordingly, the PDJ **ENTERS** default judgment under C.R.C.P. 55(b).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PDJ issues the following report to the Colorado Supreme Court pursuant to C.R.C.P. 236(a).

Factual Findings

Dorothy Kirschenman filed an eviction action against Tonya Harrison in El Paso County Court, case number 13-C-14830.³ Harrison filed her answer in the case on February 27, 2013.⁴ By a designation of agent signed the same day, Harrison appointed Respondent as her agent and gave him her power of attorney, including over claims and litigation.⁵

Even though Respondent is not licensed to practice law and is not subject to any exception to Colorado's attorney licensure requirements, Respondent prepared pleadings for Harrison in the eviction action.⁶ He announced that he was appearing for Harrison "S-POA" or "through Acknowledged Statutory Power of Attorney."⁷ His name, address, phone number, and email address appeared in the caption of the pleadings.⁸ The pleadings cited legal authority, took legal positions, and in one instance made a settlement offer.⁹

Respondent signed or prepared the following pleadings:

App. 1988) (finding that a defendant impliedly admitted the averments in the complaint by failing to deny them in a timely responsive pleading) (citing C.R.C.P. 8(d) and 55(a)).

² See "Affidavit of Kim E. Ikeler" and "Petitioner's Proposed Recommendation Regarding Restitution, a Fine, and Costs" Ex. A.

³ Pet. ¶¶ 4-5.

⁴ Pet. ¶ 7.

⁵ Pet. ¶ 8.

⁶ Pet. ¶¶ 1, 9, 21.

⁷ Pet. ¶ 11.

⁸ Pet. ¶ 10.

⁹ Pet. ¶ 12.

- He signed as attorney a “Notice of Limited Appearance by Attorney with Consent of Pro Se Party under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter,” which was filed in the eviction action on March 4, 2013.¹⁰
- He prepared a “Consent to Limited Appearance by an Attorney Under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter,” which Harrison signed and which was filed on March 4, 2013.¹¹
- He signed a “C.R.S. § 15-14-742 Certification (Agent’s Certification as to the Validity of Power of Attorney and Agent’s Authority),” which was filed on March 4, 2013.¹²
- He signed as attorney a “Notice to Elect Exclusion from C.R.C.P. 16.1 Simplified Procedure,” which was filed on March 4, 2013.¹³
- He prepared Harrison’s “C.R.S. § 13-17-202 Offer of Settlement,” which was served on Kirschenman’s attorney on or about March 14, 2013.¹⁴

Legal Standards Governing the Unauthorized Practice of Law

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,¹⁵ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.¹⁶ To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.¹⁷

Colorado Supreme Court case law holds that “an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another’s use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action.”¹⁸ The Colorado Supreme Court has further determined that one who acts “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties” engages in the practice of law.¹⁹

¹⁰ Pet. ¶ 13.

¹¹ Pet. ¶ 14.

¹² Pet. ¶ 15.

¹³ Pet. ¶ 16.

¹⁴ Pet. ¶ 17.

¹⁵ C.R.C.P. 228.

¹⁶ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982); see also *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007) (“Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons.”).

¹⁷ See C.R.C.P. 201-227.

¹⁸ *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).

¹⁹ *Shell*, 148 P.3d at 171 (quotation omitted).

In this case, Respondent prepared legal pleadings for Harrison, even though he lacked a license to practice law and he was not subject to any exception to the licensure requirements. In those pleadings, he cited legal authority and advanced legal positions. Through this conduct, Respondent acted in a representative capacity in protecting, enforcing, or defending Harrison's legal rights and duties, and he thereby engaged in the unauthorized practice of law.

Respondent's power of attorney does not change this analysis.²⁰ To permit a layperson to serve as an attorney at law by merely obtaining a statutory power of attorney would circumvent Colorado's stringent licensing requirements for the practice of law and would endanger the public. Indeed, the Supreme Court of Ohio has observed that the common law has consistently distinguished attorneys in fact from attorneys at law since the year 1402.²¹

Restitution, Fines, and Costs

C.R.C.P. 236(a) provides that, if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each such incident. The People ask for the minimum fine—\$250.00—because this is Respondent's first offense. The PDJ agrees that a \$250.00 fine is appropriate here.

The People do not seek an award of restitution because they lack evidence that Respondent received payment for his legal services. Finally, the People request reimbursement of the \$91.00 they expended in costs. The PDJ determines that these costs are reasonable and should be awarded here.

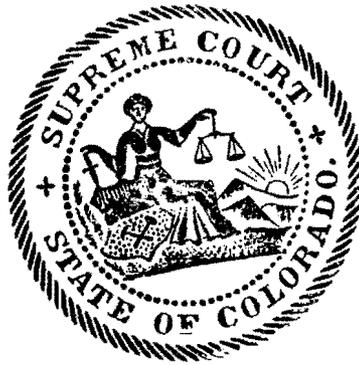
IV. RECOMMENDATION

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

²⁰ See *id.* at 175 (relying on a stipulation providing that statutory powers of attorney did not allow a layperson to act as an attorney at law); *Disciplinary Counsel v. Coleman*, 724 N.E.2d 402, 404 (Ohio 2000) (“a person holding a power of attorney, but whose name is not entered on the roll, is an attorney in fact, but not an attorney at law permitted to practice in the courts”); *Kohlman v. W. Penn. Hosp.*, 652 A.2d 849, 852 (Pa. Super. Ct. 1994) (“the power of attorney cannot be used as a device to license laypersons to act as an attorney-at-law”).

²¹ *Coleman*, 724 N.E.2d at 404.

DATED THIS 10th DAY OF JANUARY, 2014.



William R. Lucero
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

Kim E. Ikeler
Office of Attorney Regulation Counsel

Via Hand Delivery

Thomas Braden Austin
Respondent
1129 Valley Manor Court, Apt. B
Colorado Springs, CO 80906

Via First-Class Mail

Christopher T. Ryan
Colorado Supreme Court

Via Hand Delivery