

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 4, 2015 CASE NUMBER: 2014SA368
Original Proceeding in Unauthorized Practice of Law, Office of Attorney Regulation, 14UPL037	
Petitioner: The People of the State of Colorado, v. Respondent: Michael Jiron.	Supreme Court Case No: 2014SA368
ORDER OF COURT	

Upon consideration of the Order Granting Request for Recommendation of Injunction Under C.R.C.P. 12(c) 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 said Respondent, MICHAEL JIRON is Enjoined from engaging in the unauthorized practice of law in the state of Colorado.

IT IS FURTHER ORDERED that MICHAEL JIRON is assessed costs in the amount of \$206.00. Said costs to be paid to the office of Attorney Regulation Counsel within (30) days of the date of this order.

IT IS FURTHER ORDERED that any fine be Waived.

BY THE COURT, SEPTEMBER 4, 2015.

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	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondent: MICHAEL JIRON	Case Number: 14SA368
ORDER GRANTING REQUEST FOR RECOMMENDATION OF INJUNCTION UNDER C.R.C.P. 12(c) AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)	

This unauthorized practice of law matter is before the Presiding Disciplinary Judge (“the PDJ”) on “Petitioner’s Request for Recommendation of Injunction and Other Relief,” filed by Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”), on June 23, 2015. Michael Jiron (“Respondent”) did not file a response.

I. BACKGROUND AND PROCEDURAL HISTORY

The People filed a “Petition for Injunction” against Respondent on December 12, 2014. On December 17, 2014, the Colorado Supreme Court issued an “Order to Show Cause,” directing Respondent to answer within twenty-one days. Respondent filed responsive pleadings on March 12, 2015, and April 20, 2015, but neither document directly responded to the factual allegations in the People’s petition. The People filed a “Motion to Proceed” on March 26, 2015, and on April 6, 2015, the Colorado Supreme Court referred the case to the PDJ to prepare a report setting forth findings of fact, conclusions of law, and recommendations.

The PDJ held a scheduling conference on April 27, 2015, which Respondent attended by telephone. At the conference, the PDJ ordered Respondent to answer the People’s petition in accordance with the standards set forth in C.R.C.P. 8(b) no later than May 11, 2015. Respondent did not file any additional response. On May 15, 2015, the People filed “Petitioner’s Request (A) That the Allegations of the Petition Be Deemed Admitted and (B) For Recommendation of Injunction and Other Relief.” Respondent did not respond. On June 19, 2015, the PDJ granted the People’s motion, deeming admitted paragraphs 8-14 and

18-20 of the petition. In that order, the PDJ declined to determine that Respondent had engaged in the unauthorized practice of law because it appeared that the People's motion did not give Respondent adequate notice of the consequences of his failure to respond. On June 23, 2015, the People filed their pending motion, to which Respondent did not respond.

II. FACTUAL FINDINGS

As noted above, the PDJ has deemed admitted paragraphs 8-14 and 18-20 of the petition. Those allegations are summarized here. The PDJ also takes judicial notice that Respondent is not admitted to practice law in Colorado.¹

Respondent drafted a complaint for another person to file pro se in federal district court.² The complaint alleged that the claimant was owed disability and pension benefits.³ The complaint, however, was defectively drafted: it failed to include a jurisdictional statement, failed to name state actors as defendants or make factual allegations in support of its 42 U.S.C. section 1983 claim, failed to make specific factual contentions in support of state law claims, and failed to cite statutes relevant to the pension benefit claims.⁴ The federal district court dismissed the complaint, finding it failed to comply with F.R.C.P. 8.⁵

Respondent drafted an opening brief on appeal and a motion for relief that were filed in the Tenth Circuit Court of Appeals.⁶ In these pleadings, Respondent cited federal statutes and regulations in support of legal arguments made for the claimant.⁷ He signed the brief and motion along with the claimant.⁸

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. In considering a motion for judgment on the pleadings, a 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."⁹ "A court should not grant such a motion unless the matter can be finally determined on the pleadings."¹⁰ Here, the relevant allegations of the petition are not in dispute, and the matter can be resolved on those admitted allegations.

¹ Colorado Supreme Court Attorney Information Search, www.coloradosupremecourt.com/Search/AttSearch.asp (accessed July 28, 2015).

² Pet. ¶ 8.

³ Pet. ¶ 8.

⁴ Pet. ¶¶ 9-13.

⁵ Pet. ¶ 14.

⁶ Pet. ¶ 18.

⁷ Pet. ¶ 19.

⁸ Pet. ¶ 20.

⁹ *Abts v. Bd. of Educ.*, 622 P.2d 518, 521 (Colo. 1980).

¹⁰ *Smith v. TCI Cmmc'ns, Inc.*, 981 P.2d 690, 695 (Colo. App. 1999).

Unauthorized Practice of Law Claims

The Colorado Supreme Court has exclusive jurisdiction to define the practice of law within this state.¹¹ It restricts the practice of law in order to protect members of the public from receiving incompetent legal advice from unqualified individuals.¹² Colorado Supreme Court case law holds 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.¹³ To draft legal pleadings for another person’s use in a judicial proceeding amounts to the unauthorized practice of law.¹⁴

With these principles in mind, the PDJ turns to the undisputed facts. Respondent drafted a complaint in which he advocated that another person was entitled to disability and pension benefits under federal law, including under 42 U.S.C. § 1983. Respondent also cited state law in support of this claim. When the district court dismissed the complaint, Respondent continued the representation by filing an opening brief and a motion in the Tenth Circuit Court of Appeals. By drafting these pleadings Respondent acted in a representative capacity, and he thus engaged in the unauthorized practice of law.

Respondent advances several defenses in his two responsive pleadings. First, Respondent argues that his statements in the pleadings were truthful and thus cannot constitute the unauthorized practice of law. The case he cites in support, *Bates v. State Bar of Arizona*, does not in fact support his position because that case addresses attorney advertising.¹⁵ Furthermore, contrary to Respondent’s position, the prohibition against the unauthorized practice of law does not impinge upon his First Amendment rights.¹⁶

Respondent next argues that the rules governing the unauthorized practice of law enforce a monopoly on behalf of lawyers. The Colorado Supreme Court has specifically rejected this argument.¹⁷

¹¹ C.R.C.P. 228.

¹² *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.”); *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.”).

¹³ *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).

¹⁴ *Shell*, 148 P.3d at 171.

¹⁵ 433 U.S. 350, 366 (1977).

¹⁶ *Shell*, 148 P.3d at 173 (holding that Colorado’s ban on the unauthorized practice of law generally does not implicate the First Amendment because it prohibits unauthorized conduct, not speech).

¹⁷ *Grimes*, 654 P.2d at 826 (holding that the licensing of attorneys is not intended to create a monopoly for lawyers or limit access to courts but rather to protect the public from unqualified individuals providing incompetent legal advice).

Finally, Respondent argues that non-lawyers should be allowed to represent fellow union members in court to protect their common rights. Neither case Respondent cites supports his position. While an organization may assist its members by recommending specific lawyers to them,¹⁸ that is not what Respondent did here. Instead, he took it upon himself to act as another person's legal representative. In sum, the PDJ cannot find merit in any of the defenses Respondent advances.

Costs, Fine, and Restitution

The People ask that Respondent be ordered to pay \$206.00 in costs to cover their administrative fee and the service of process, as provided in C.R.C.P. 237(a). The PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$206.00 in costs against Respondent.

Turning to the matter of a fine, 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 recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each such incident. In assessing fines, the Colorado Supreme Court previously has examined whether a respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.¹⁹ C.R.C.P. 236(a) does not explicitly authorize the PDJ to recommend a waiver of a fine. The Colorado Supreme Court, however, has discretion to waive a fine.²⁰

Because the People agree that Respondent acted on behalf of a disabled friend, not for profit, the PDJ believes a waiver is appropriate here. It appears that Respondent's actions, though misguided, were pursued in a good faith effort to aid a dying friend. The PDJ therefore recommends that the Colorado Supreme Court exercise its discretion to waive a fine. If the Colorado Supreme Court does not elect to waive a fine here, the PDJ recommends imposition of the minimum fine of \$250.00.

Finally, the People do not request any award of restitution here.

IV. CONCLUSION

The PDJ **GRANTS** the "Petitioner's Request for Recommendation of Injunction and Other Relief." The prehearing conference set for July 30, 2015, as well as the hearing set for August 20, 2015, are **VACATED**.

¹⁸ *Brotherhood of R.R. Trainmen v. Virginia ex. rel Va. State Bar*, 377 U.S. 1, 8 (1964) (holding that the First and Fourteenth Amendments entitle a union to recommend specific lawyers to its members).

¹⁹ *People v. Adams*, 243 P.3d 267-68 (Colo. 2010).

²⁰ C.R.C.P. 237(a) ("If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs.").

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that 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 order Respondent to pay **COSTS** in the amount of \$206.00. Finally, the PDJ **RECOMMENDS** that the Colorado Supreme Court **WAIVE** a **FINE**.²¹

Either party may file objections to this report with the Colorado Supreme Court as provided in C.R.C.P. 236 **on or before August 25, 2015**.

DATED THIS 28th DAY OF JULY, 2015.


WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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²¹ As explained above, should the Colorado Supreme Court elect to impose a fine, the PDJ recommends that the Colorado Supreme Court fine Respondent in the amount of \$250.00.