

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 17, 2015 CASE NUMBER: 2014SA171
Original Proceeding in Contempt, 14UPL006	
Petitioner: The People of the State of Colorado,	
v. Respondent: Gregory Dean Albright.	Supreme Court Case No: 2014SA171
ORDER OF COURT	

Upon consideration of the Report of the Hearing Master filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that the Court approves the Recommendation of the Presiding Disciplinary Judge. Respondent, GREGORY DEAN ALBRIGHT, shall pay a fine of \$5,000.00 within (60) days from the date of this order.

IT IS FURTHER ORDERED that Respondent, GREGORY DEAN ALBRIGHT, should seek a licensed attorney's advice if he considers undertaking any future activities that relate to the practice of law. Respondent, GREGORY DEAN ALBRIGHT, risks imprisonment if he is again found to have engaged in the unauthorized practice of law.

BY THE COURT, AUGUST 17, 2015.

SUPREME COURT, STATE OF COLORADO
ORIGINAL PROCEEDING IN CONTEMPT BEFORE
THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1300 BROADWAY, SUITE 250
DENVER, CO 80203

Petitioner:

THE PEOPLE OF THE STATE OF COLORADO

Case Number:

14SA171

Respondent:

GREGORY DEAN ALBRIGHT

REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 239(a)

This contempt case is before the Presiding Disciplinary Judge (“the PDJ”) on an order issued by the Colorado Supreme Court on July 9, 2014, referring this matter to the PDJ for findings of fact, conclusions of law, and recommendations.

I. SUMMARY

The Office of Attorney Regulation Counsel (“the People”), represented by Kim E. Ikeler and Alan C. Obye, allege that Gregory Dean Albright (“Respondent”—who is not a licensed lawyer—committed contempt by practicing law in defiance of an injunction issued by the Colorado Supreme Court. Specifically, the People claim that Respondent represented another person in Adams County and Jefferson County district courts by preparing complaints and motions. The PDJ finds beyond a reasonable doubt that Respondent committed contempt in the Adams County and Jefferson County matters. The PDJ recommends that the Colorado Supreme Court find Respondent in contempt and fine him \$5,000.00.

II. BACKGROUND AND PROCEDURAL HISTORY

This case came before the Colorado Supreme Court on the People’s “Petition for Contempt Citation” filed on May 12, 2014, which requested imposition of a fine and a jail term. Respondent responded to the petition on July 8, 2014, and the Colorado Supreme Court appointed the PDJ as hearing master the next day.

The PDJ conducted a scheduling conference on August 11, 2014, which Respondent attended pro se by telephone from the Arapahoe County Detention Facility. The PDJ scheduled a contempt hearing for December 4 and 5, 2014. Because the People requested imposition of a jail sentence, Respondent invoked his right to court-appointed counsel under

C.R.C.P. 107(d). By order of August 15, 2014, the PDJ directed Respondent to file Form JDF208 to support his request for counsel. Respondent did not submit that form, so by order of September 17, 2014, the PDJ appointed Melissa Trollinger Annis as provisional counsel to help Respondent complete the form. The PDJ reviewed Respondent's Form JDF208, which Respondent completed with Ms. Annis's assistance, and determined that Respondent is indigent. On October 3, 2014, the PDJ granted Ms. Annis's motion to withdraw and appointed Brian C. Williamson and David S. Kaplan as substitute counsel.

On October 22, 2014, the PDJ granted the parties' joint motion for a continuance, and subsequently rescheduled the hearing for May 5 and 6, 2015. On January 12, 2015, the PDJ denied the People's motion to continue the hearing. On February 2, 2015, the PDJ also denied the People's motion for sanctions based on Respondent's refusal to be sworn or to give testimony at his deposition. Because the People asked for imprisonment—the mere possibility of which entitles a defendant to assert the privilege against self-incrimination¹—the PDJ concluded that Respondent could properly invoke his right to remain silent at his deposition. Finally, on May 1, 2015, the PDJ denied Respondent's motion for summary judgment.

The contempt hearing took place at the Arapahoe County Justice Center on May 5, 2015. Mr. Obye and Mr. Ikeler represented the People, while Mr. Williamson represented Respondent, who also appeared. The PDJ considered stipulated exhibits S1-S61 and the stipulated facts, and heard testimony from Jacob Frederick Herr, Katherine Otto, Judge Scott Crabtree, and Respondent. At the outset of the hearing, the PDJ denied Respondent's "Motion for Enlargement of Time for Trial Citing Respondent's Extraordinary Circumstances." This pro se motion was brought to the PDJ's attention immediately before the hearing commenced. During the hearing, the PDJ denied Respondent's two motions for a directed verdict or a judgment of acquittal.

Respondent, again acting pro se, filed a "Motion for Evidentiary Hearing to Review Claim of Ineffective Assistance of Counsel" on May 14, 2015, as well as a "Formal Objection & Notification to Deficiency of the Defense Depriving of Constitutional Rights," which was transmitted to the PDJ by the People after they received it on May 7, 2015. The PDJ denied Respondent's motion on May 18, 2015, noting in part that Respondent may not file pro se motions while represented by counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Findings

Respondent is not licensed to practice law in Colorado or any other state.²

¹ See, e.g., *People v. Razatos*, 699 P.2d 970, 977 (Colo. 1985).

² Stip. Facts ¶ 1.

In 2009, the People filed a petition alleging that Respondent had engaged in five instances of the unauthorized practice of law.³ At that time, Respondent was holding himself out as “Albright Law” and “The Albright Law Firm.”⁴ The Colorado Supreme Court directed him to show cause why he should not be enjoined from the practice of law, but he did not timely respond. Accordingly, the Colorado Supreme Court enjoined him from the unauthorized practice of law on January 29, 2010, and referred the matter to the PDJ for findings and recommendations.⁵ On May 21, 2010, the Colorado Supreme Court accepted the PDJ’s report, which recommended imposing a fine of \$1,250.00 and awarding \$91.00 in costs. Respondent did not pay the ordered fine or costs.⁶ The Colorado Supreme Court denied Respondent’s two belated requests for a hearing on the People’s allegations.⁷

In 2011, the People filed a petition for contempt citation in the Colorado Supreme Court, alleging that Respondent had engaged in the unauthorized practice of law in violation of the injunction.⁸ Respondent responded to the petition, and the PDJ held a contempt hearing on August 15, 2012. The PDJ determined that Respondent had helped a prisoner in the Adams County Detention Facility to draft several motions, including a petition seeking a habeas corpus evidentiary hearing, a response to a motion to dismiss, a motion for reconsideration, and two notices of adjudication.⁹ Just before drafting these documents, Respondent himself had been in the custody of the Adams County Detention Facility in connection with convictions for escape, forgery, and assault.¹⁰ The PDJ rejected Respondent’s contention that, even though he had been released from jail on bond when he drafted the documents, he was authorized to practice law as a “jailhouse lawyer.”¹¹ On November 30, 2012, the Colorado Supreme Court found Respondent in contempt and fined him \$2,000.00.¹² Respondent did not pay the fine.¹³

The allegations now before the PDJ concern Respondent’s relationship with retired teacher Frederick Herr (“Herr”), an investor and restaurant proprietor.¹⁴ Herr first met Respondent in 2010 or 2011 through Herr’s nephew, the inmate in the Adams County Detention Facility for whom Respondent had drafted motions.¹⁵

³ That matter was captioned *People v. Gregory Albright, d/b/a Albright Law and The Albright Law Firm*, case number 09SA366.

⁴ See the PDJ’s “Report of Hearing Master Pursuant to C.R.C.P. 236(a)” (Mar. 31, 2010).

⁵ Stip. Facts ¶ 2.

⁶ Stip. Facts ¶ 7.

⁷ In those motions, Respondent claimed he did not intend to violate any law and argued he was exercising his First Amendment rights, but he did not explain why he neglected to timely respond to the show cause order.

⁸ That matter was captioned *People v. Gregory Albright*, case number 11SA153.

⁹ See the PDJ’s “Report of Hearing Master Pursuant to C.R.C.P. 239(a)” (Oct. 22, 2012).

¹⁰ See the PDJ’s “Report of Hearing Master Pursuant to C.R.C.P. 239(a)” (Oct. 22, 2012).

¹¹ See the PDJ’s “Report of Hearing Master Pursuant to C.R.C.P. 239(a)” (Oct. 22, 2012).

¹² Stip. Facts ¶ 8.

¹³ Stip. Facts ¶ 9.

¹⁴ Stip. Facts ¶ 20.

¹⁵ See the PDJ’s “Report of Hearing Master Pursuant to C.R.C.P. 239(a)” (Oct. 22, 2012).

In 2001, Herr, along with Irma Schirrmeister and Carlos Schirrmeister, purchased 160 acres of land in Adams County. The same year, Herr formed a company with those individuals, as well as with Nathalie Schirrmeister and Andrea Herr, who is Herr's daughter. The company was called FICAN—an acronym representing the first letter of each member's first name. According to Herr, FICAN's original purpose was to purchase, repair, and sell houses. FICAN took ownership of the Adams County land and also purchased a duplex in Golden, Colorado.

The relationship among the members of FICAN later soured. Herr claims that Irma Schirrmeister refused to give him an accounting for the Golden property and that Nathalie Schirrmeister shorted him on the proceeds from the sale of that property in 2013.

As Herr tells it, he began talking with Respondent in 2013 about his difficulties with the Schirrmeisters, and Respondent offered to help. Herr knew that Respondent had studied the law and had advocated for other people, including Herr's nephew. According to Herr, Respondent said he had worked with people at the University of Denver law school, though he never said he was a lawyer. Herr testified that he paid Respondent in autumn 2013 about \$5,000.00 for legal assistance in these matters.

Respondent and Herr together began investigating the dispute with the Schirrmeisters, Herr said, and they discovered that in 2012 the Schirrmeisters had filed what Herr believed to be a fraudulent operating agreement for FICAN with the Secretary of State. According to Herr, this operating agreement bears what purport to be his and Andrea Herr's signatures, but he and his daughter never in fact signed the document. The operating agreement, among other things, provides that a member of FICAN cannot transfer any units of FICAN to a non-member without approval by a supermajority of members.¹⁶ Herr said that Respondent conceived the idea of filing a lawsuit to protect Herr's interest in the Adams County land from any adverse actions by the Schirrmeisters.

Respondent's account of his business relationship with Herr is much different. According to Respondent, he and Herr entered into an agreement in autumn 2010 to develop the Adams County land as a solar energy project. They did not at the time develop "a full agreement," Respondent testified. Respondent was incarcerated in late 2010 and released in 2013.¹⁷ On his release, he says, he communicated with two major companies regarding the technology to be used in the solar venture. Respondent, who had an engineering background, would be in charge of business development and engineering for the project, while Herr would head up the academic and training side. The partners'

¹⁶ See Ex. S3 at 0039.

¹⁷ See Reply to Pet. for Contempt Citation at 1 ("In around October 2010 Mr. Albright & Jacob Herr entered into an agreement concerning the property in Adams County to develope [sic] it for a solar energy project. Upon my return to society Mr. Herr contacted a relative of mine to reinable [sic] our agreement to the solar energy project and on or around the date of Sept. 10, 2013 Mr. Herr & I renewed our 2010 agreement."); see also the PDU's "Report of Hearing Master Pursuant to C.R.C.P. 239(a)" (Oct. 22, 2012) (indicating that Respondent was incarcerated on December 15, 2010).

ambitions were significant, Respondent testified: they would seek \$400 to \$500 million in federal funding, they would purchase additional land in Adams County, and Respondent would draw a \$200,000.00 annual salary. Herr, meanwhile, testified that he and Respondent discussed a possible solar energy venture, but he believes the first discussion took place in 2013, not 2010.

Both men agree—and the evidence shows—that on September 20, 2013, Herr and Respondent entered into a “Partnership Agreement” that purported to grant Respondent a five-percent share of Herr’s interest in the Adams County land.¹⁸ The partnership agreement states that the five-percent stake “recognizes Mr. Albright as a co-owner in this property and enables him to partake of any and all litigation concerning the property and legal status and structure of the company FICAN INVESTMENTS LLC.”¹⁹ Herr also executed a quitclaim deed the same day, ostensibly transferring this property interest to Respondent.²⁰

According to Herr, Respondent devised the idea of the partnership agreement in September 2013 as a means to permit him to file court documents. Herr said that this idea made sense: he understood that Respondent could not act as a lawyer for other people, but “being part of the situation” would permit him to file court documents. Allowing Respondent to assist with the litigation was the sole purpose for the agreement and the quitclaim deed, Herr testified.

By Respondent’s account, the primary purpose of the partnership agreement was to develop the solar venture. Respondent testified that he began researching FICAN as part of his business development responsibilities for that venture. In doing so, he discovered the FICAN operational agreement that the Schirrmasters had filed in 2012. Respondent realized that the agreement would have made void any transfer to him under the partnership agreement or the quitclaim deed. He asked Herr whether he had signed the operational agreement, and Herr said he had not. According to Respondent, he realized that the operational agreement put the solar venture at risk, so legal action was necessary.

On September 30, 2013, a complaint was filed in Adams County District Court naming Herr and Respondent as plaintiffs and the Schirrmasters, Dallan James Dirkmaat, Esq., and The People’s Law Firm as defendants.²¹ The complaint sought “emergency protective orders” governing FICAN’s assets and property, arguing that the defendants had caused Herr a loss of \$222,621.34 through actions related to the Adams County and Golden properties.²² The complaint alleged that FICAN’s operational agreement contained forged signatures and improperly allowed the Schirrmasters to let others use the Adams County

¹⁸ Ex. S9 at 0098.

¹⁹ Ex. S9 at 0098.

²⁰ Ex. S9 at 0099. Herr was unsure if the deed had ever been recorded.

²¹ Ex. S2. The complaint alleged that Dallan James Dirkmaat had drafted FICAN’s operational agreement. Ex. S2 at 0023. Dirkmaat is the owner of The People’s Law Firm. Ex. S12.

²² Ex. S2 at 0022-23.

parcel without the consent of Herr and his daughter.²³ The complaint asked for several types of relief: naming Herr as FICAN's general manager, deeming the operating agreement "inert," barring the defendants from accessing FICAN's bank account, ordering the defendants to surrender FICAN's records to Herr, precluding the defendants from using FICAN's name in any transactions, and prohibiting the defendants from transferring title to the Adams County land or using the land for business ventures.²⁴ The complaint did not mention the solar venture; according to Respondent, this omission was intentional so that the Schirrmasters could not use this information to the plaintiffs' disadvantage.

As Herr tells it, it was Respondent's idea to draft the complaint and later-filed court documents, and it was Respondent who developed the legal theories and content, turning to Herr only to supply factual information. Herr said his own role was limited to reviewing and signing the completed documents. Respondent, by contrast, testified that the drafting was a collaborative process whereby he and Herr would trade versions of documents, taking turns drafting language and editing. Respondent said that Herr conducted legal research and developed some of the legal theories set forth in the documents. Respondent admits that he drafted portions of the court filings.

On October 8, 2013, Respondent and Herr filed an "Affidavit and Petition for Injunction" in the Adams County case, seeking similar forms of relief to those requested in the complaint.²⁵ The petition contains the following statement:

Gregory D. Albright holds 5% of 1/4th section of the 160 acre [sic] identified in the specification of justification bequeath [sic] to him under a partnership agreement between he and Mr. Herr and under such proviso he asserts self jurisdiction in this action for protection of the property and assets as co-plaintiff with special interest.²⁶

On October 9, Judge Scott Crabtree issued an order stating that the complaint contained no "reference to [Respondent] as a basis for any relief" and noting that the Colorado Supreme Court had enjoined Respondent from the unauthorized practice of law.²⁷ Judge Crabtree ordered Respondent to show cause within one week why he should not be dismissed as a plaintiff.²⁸ At the contempt hearing, Judge Crabtree testified that he was suspicious of Respondent's standing in the case because FICAN's ownership of the property in question precluded Herr from transferring a property interest. Judge Crabtree also testified that Respondent repeatedly called his clerk from a courthouse telephone. On October 11, 2013, after one such call, Judge Crabtree convened a hearing to address this

²³ Ex. S2 at 0023.

²⁴ Ex. S2 at 0023-24.

²⁵ Ex. S4 at 0056-64.

²⁶ Ex. S4 at 0057-58.

²⁷ Ex. S4 at 0047. Judge Crabtree had earlier recommended that the plaintiffs seek legal counsel. Ex. S3.

²⁸ Ex. S4 at 0047.

conduct, telling Respondent to limit his use of the courtroom telephone and reminding him that he would be dismissed as a plaintiff unless he responded to the show cause order.

On October 16, Respondent and Herr moved to recuse Judge Crabtree, arguing that he was prejudiced against Respondent and that he was violating federal law.²⁹ Herr and Respondent concurrently filed a “Contemporaneous Objection to Court,” to which a copy of the partnership agreement was attached.³⁰ The motion was denied.³¹

Katherine Otto entered her appearance in the Adams County case for Nathalie, Irma, and Carlos Schirrmeister in October 2013,³² while Dirkmaat represented himself and the People’s Law Firm.³³ Both attorneys moved to dismiss the complaint and for an award of fees and costs.³⁴

At the contempt hearing, Otto testified about her interactions with Respondent, who left her many “demanding” voicemail messages. Otto had a single phone conversation with Respondent in December 2013. When Otto turned down his request for an in-person meeting, he became “hostile” and “threatening,” she said. Otto’s understanding was that Respondent was “in control” of the litigation. She said there was a distinction between the documents she knew to be authored by Herr and those filed in Adams County, which she said demonstrated a degree of “sophistication and complexity” that was lacking in Herr’s own drafting.

On November 7, 2013, Respondent and Herr sought to dismiss their complaint without prejudice³⁵ to enable them pursue relief in Jefferson County (the venue of the Golden property), instead of Adams County, as detailed below. On December 23, Judge Crabtree ruled that the plaintiffs could dismiss their complaint without prejudice by paying attorney’s fees and costs.³⁶

On January 13, 2014, Herr filed a pro se response to the Schirrmeisters’ motion to dismiss the Adams County complaint with prejudice.³⁷ The response indicates that a licensed attorney had assisted with its drafting.³⁸ Among other things, Herr does not contest Respondent’s dismissal as a plaintiff, explaining that he included Respondent as a plaintiff based on Respondent’s advice and Herr’s own understanding that Respondent was “like a real attorney” even though he was unlicensed.³⁹ Herr further avers that Respondent

²⁹ Ex. S6 at 0072-73.

³⁰ Ex. S9.

³¹ Ex. S9.

³² Ex. S10.

³³ Ex. S12.

³⁴ Exs. S12, S14.

³⁵ Ex. S13.

³⁶ Ex. S28 at 0232.

³⁷ Ex. S29.

³⁸ Ex. S29 at 0237.

³⁹ Ex. S29 at 0235.

“drafted all the pleadings and handled everything on the case” and that Herr “relied on his judgment.”⁴⁰ Herr concludes that Respondent misled him and that he “regrets letting him handle his case.”⁴¹ At the time he filed this response, Herr testified, Respondent had again been incarcerated.

In his reply to the contempt citation, Respondent tells a different story of the breakdown in his relationship with Herr. Respondent asserts that in December 2013 he learned Herr indeed had signed FICAN’s operational agreement and had lied to him about that fact.⁴² In his reply, Respondent states that he intends to pursue criminal charges and civil claims against Herr for breach of contract and other misconduct.⁴³

On January 24, 2014, Judge Crabtree dismissed with prejudice Respondent’s claims, dismissed without prejudice Herr’s claims, and ruled that Respondent and Herr were jointly and severally liable for attorney’s fees and costs.⁴⁴ Herr paid \$18,973.06 in fees and costs to the Schirrmasters.⁴⁵

Meanwhile, on November 26, 2013, Respondent and Herr filed a complaint in Jefferson County District Court against the Schirrmasters, Dirkmaat, and the People’s Law Firm.⁴⁶ The complaint is more complex than the Adams County complaint, setting forth nine causes of action.⁴⁷ Three of the claims assert injury to Respondent. The civil conspiracy claim alleges in part that Respondent was harmed by FICAN’s operational agreement because that agreement prohibits any business ventures between Herr and Respondent, including the “business venture pertaining to renewable energy.”⁴⁸ The claim for extreme and outrageous conduct also alleges in part that the creation of the operational agreement was “with reckless disregard of [Herr] . . . as well as to any of his future business endeavors which then directly affected [Respondent].”⁴⁹ Finally, the interference of contract claim alleges that Respondent and Herr had an agreement and business concept for the Adams County parcel and that the operating agreement prevented Herr’s use of the property, thus causing economic loss to Herr and Respondent.⁵⁰ The complaint sought, among other things, the recovery of a loan allegedly made by Herr to Irma Schirrmaster, damages of various types, expulsion of the Schirrmasters as partners, and the surrender of company documentation.⁵¹

⁴⁰ Ex. S29 at 0235, 0237.

⁴¹ Ex. S29 at 0236.

⁴² Reply to Pet. for Contempt Citation at 4, 6.

⁴³ Reply to Pet. for Contempt Citation at 5.

⁴⁴ Ex. S31 at 0268.

⁴⁵ See Ex. S39. The record does not make clear whether Herr paid Dirkmaat and The People’s Law Firm.

⁴⁶ Ex. S42.

⁴⁷ Ex. S42.

⁴⁸ Ex. S42 at 0328-29.

⁴⁹ Ex. S42 at 0330.

⁵⁰ Ex. S42 at 0332-33.

⁵¹ Ex. S42 at 0328, 0334.

The Jefferson County case was placed in abeyance pending resolution of the Adams County lawsuit.⁵² When Herr and Respondent failed to attend a status conference in Jefferson County in March 2014, the court deemed their claims abandoned, dismissed the claims without prejudice, and awarded the defendants fees and costs.⁵³ Herr paid the \$5,735.87 award to the Schirrmeisters.⁵⁴

In addition to bringing the civil cases in Adams County and Jefferson County, Respondent and Herr requested that the Adams County district attorney's office investigate the Schirrmeisters for criminal wrongdoing. According to Otto, charges were never filed because the investigator concluded that the Schirrmeisters had committed no crimes. In fact, she said, the investigator found that Herr may have forged the Schirrmeisters' names on FICAN business documents, so the focus of the investigation shifted to Herr's possible wrongdoing. As a general matter, Otto averred that Herr has taken untruthful positions and that he is not a credible witness.

Both Judge Crabtree and Otto testified at the contempt hearing about the harm they believe Respondent caused. Judge Crabtree said that Respondent's actions caused the court significant unnecessary work in handling a variety of motions. Even though Judge Crabtree recommended that Respondent and Herr consult a lawyer, the motions "just kept coming," and ultimately Judge Crabtree determined that the litigation was frivolous. Otto said that the litigation was both difficult and expensive because the plaintiffs did not observe proper procedures and acted unreasonably. If Herr had been represented by a licensed lawyer, on the other hand, she could have resolved any issues through a simple call to opposing counsel. Ultimately, Herr paid Otto's fees for the litigation, but her firm had to write off about \$1,700.00 that she incurred while defending her clients in the criminal investigation initiated by Respondent and Herr.

Before proceeding to the legal analysis, the PDJ makes findings regarding two key factual disputes identified above. In so doing, the PDJ does not rely on the veracity of Herr's or Respondent's testimony, because the PDJ finds neither witness credible. In making this determination, the PDJ considers a number of factors, including Otto's testimony about Herr's credibility and the highly improbable nature of many of Respondent's assertions, such as his statements regarding the substantial scope of the solar venture.

First, based on the consistent language and style of the filings in the Adams County and Jefferson County cases—which also reflect the style of the motions authored by Respondent at issue in case number 11SA153 and the pro se motions in this case—in addition to Otto's testimony about the differences between Herr's and Respondent's writing styles, the PDJ finds beyond a reasonable doubt that Respondent was the primary author of the documents filed in the Adams County and Jefferson County cases.

⁵² Ex. S49.

⁵³ Ex. S41 at 0314.

⁵⁴ See Ex. S61. The record does not make clear whether Herr paid Dirkmaat and The People's Law Firm.

Second, although Respondent and Herr may have had informal discussions about a solar project on the Adams County parcel as early as 2010,⁵⁵ the PDJ finds beyond a reasonable doubt that no formalized or committed agreement existed to develop the solar venture. Rather, the PDJ finds that the primary reason Respondent participated in the Adams County and Jefferson County cases was because Herr had hired him to provide legal services.

Several facts bolster the determination that Herr and Respondent had no formal agreement to develop the solar venture. The Schirrmasters likely would not have supported the solar venture given their disputes with Herr, and they could have thwarted any such venture as majority members of FICAN; thus Herr probably would not have wasted his time on seriously pursuing the venture. Moreover, if Herr and Respondent had in fact entered a formal agreement in 2010, the 2013 partnership agreement likely would have been broader in scope; instead, it referred only to a small stake in the Adams County parcel and was signed just before the filing of the Adams County lawsuit, strongly suggesting that it was simply a vehicle to allow Respondent to participate in that lawsuit. Indeed, if Respondent and Herr had already committed to pursue the solar venture, the men likely would have adjudged their commitment sufficient to justify Respondent's participation in the litigation, obviating the need for the partnership agreement. Instead, the solar venture was not mentioned in the initial Adams County filings, suggesting that Respondent decided to exaggerate the formality of the venture as a defensive strategy after Judge Crabtree signaled that Respondent's supposed property stake did not enable him to file court documents for Herr.

Legal Analysis

The PDJ's determination of whether Respondent should be held in contempt requires a two-step analysis: the PDJ first must decide if Respondent engaged in the unauthorized practice of law, and if so, the PDJ must decide if that action was contemptuous.

The Colorado Supreme Court has exclusive jurisdiction in Colorado to define the practice of law and to prohibit the unauthorized practice of law.⁵⁶ 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."⁵⁷ Phrased somewhat more broadly, a layperson who acts "in a representative capacity in protecting, enforcing, or defending the

⁵⁵ See, e.g., Ex. S13 at 0116 & Ex. S42 at 0323 (respectively, a motion filed in Adams County District Court and the complaint filed in Jefferson County District Court, both of which state that Herr and Respondent agreed in September 2010 to develop a renewable energy project, but neither of which attach any document memorializing that agreement).

⁵⁶ People v. Adams, 243 P.3d 256, 265 (Colo. 2010).

⁵⁷ People v. Shell, 148 P.3d 162, 171 (Colo. 2006).

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.⁵⁸

The PDJ has no trouble concluding that Respondent engaged in the unauthorized practice of law in this matter. Although a nonlawyer can represent himself or herself in court, a nonlawyer has no right to represent other persons.⁵⁹ Here, Respondent helped to draft court documents that were filed in both his own name and that of Herr in Herr's individual capacity. Even if the PDJ construed the court filings as representing Respondent and Herr's "partnership," the same legal bar would apply because, with limited exceptions that are not relevant here, a layperson cannot represent an organizational entity.⁶⁰ The PDJ notes that Respondent would have engaged in the unauthorized practice of law on these grounds even if the PDJ accepted Respondent's testimony that he collaborated with Herr on drafting the court documents. To engage in the unauthorized practice of law, it is not necessary that a layperson author an entire pleading for another person.⁶¹

Next, the PDJ must determine whether Respondent's unauthorized practice of law was in contempt of the Colorado Supreme Court's order enjoining him from the practice of law. The Colorado Supreme Court may hold a respondent in contempt for disobeying a court order pursuant to C.R.C.P. 107 and C.R.C.P. 238-239. As pertinent here, the Colorado Supreme Court may impose "[p]unishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court."⁶² Punishment may be appropriate for either "direct contempt" that occurs in the presence of the court or, as relevant here, "indirect contempt" that occurs outside the presence of the court.⁶³

To impose punitive contempt, four elements must be present: "(1) the existence of a lawful order of the court; (2) contemnor's knowledge of the order; (3) contemnor's ability to comply with the order; and (4) contemnor's willful refusal to comply with the order."⁶⁴ The People must prove these elements beyond a reasonable doubt.⁶⁵ The first three elements are not contested here: the Colorado Supreme Court's injunction was lawful, Respondent knew of the injunction, and he had the ability to comply with the injunction.⁶⁶ Respondent

⁵⁸ *Denver Bar Ass'n v. Pub. Utils. Cmm'n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); see also *Shell*, 148 P.3d at 171.

⁵⁹ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 824 (Colo. 1982); *Adams*, 243 P.3d at 265.

⁶⁰ C.R.C.P. 121 § 1-1(2)(b)(V) (indicating that any party other than a natural person must be represented by counsel in court proceedings, unless the party is a closely held entity that complies with C.R.S. § 13-1-127).

⁶¹ In addition, the PDJ would find that Respondent engaged in the unauthorized practice of law even if the PDJ credited Respondent's account regarding the solar venture. Had the two men formally agreed to pursue the solar venture in 2010, Respondent still would have had no legal right to represent Herr or the "partnership" in the venture; he could only have represented his own interests in any such venture.

⁶² C.R.C.P. 107(a)(4). Punitive contempt is distinguishable from remedial contempt, which is imposed to "force compliance with a lawful order or to compel performance of an act." C.R.C.P. 107(a)(5).

⁶³ C.R.C.P. 107(a)(2)-(3).

⁶⁴ *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (quotation omitted).

⁶⁵ C.R.C.P. 107(d)(1).

⁶⁶ Stip. Facts ¶¶ 3-6.

denies, however, that he willfully refused to comply with the injunction. He asserts that he was intending to comply with the Colorado Supreme Court's order and that he believed he had an interest in the litigation that justified his participation.

According to the Colorado Supreme Court, “[a] person who ‘willfully’ violates an order of a court acts voluntarily, knowingly, and with conscious regard for the consequences of his conduct, refusing to comply with court orders when [he] has the ability to do so.”⁶⁷ Willfulness in the context of criminal contempt may be inferred from the facts and circumstances established as evidence.⁶⁸

Here, the Colorado Supreme Court's previous injunction and contempt orders concerned somewhat different behavior on Respondent's part: authoring pleadings for an inmate ostensibly as jailhouse counsel and acting as an advocate for others as the “Albright Law Firm.” Through his representative actions in those past matters, Respondent was in no way seeking to represent his own interests.

Even so, the PDJ here finds beyond a reasonable doubt that Respondent willfully violated the injunction in the Adams County and Jefferson County cases. Respondent may have believed that the partnership agreement—which purported to grant him a share of the Adams County parcel—permitted him to file court documents in defense of his own interests and the interests he shared with Herr under the partnership agreement; the two men may have had an organizational affiliation, and the legal principle that an organization must be represented by counsel is likely not familiar to laypersons. But the Adams County complaint was not limited to seeking relief for Respondent and Herr's shared interests in the Adams County land. Rather, it seeks various types of relief that directly benefit Herr and would extremely tangentially—at best—affect Respondent. For instance, barring the defendants from accessing FICAN's bank account, requiring the defendants to surrender FICAN's records to Herr, and precluding the defendants from using FICAN's name in any transactions are not forms of relief that would genuinely benefit Respondent. By seeking these forms of relief on Herr's behalf, the PDJ concludes that Respondent knew he was not representing his own interests or any interests he shared with Herr pursuant to the partnership agreement, and the PDJ thus finds that Respondent willfully violated the injunction.

Moreover, the PDJ finds beyond a reasonable doubt that Judge Crabtree put Respondent on notice that he was engaging in the unauthorized practice of law. Although the partnership agreement was not attached to or explained in the Adams County complaint, the petition for injunction that Respondent and Herr filed on October 8 averred

⁶⁷ *In re Marriage of Nussbeck*, 974 P.2d 493, 499 (Colo. 1999); see also *In re Boyer*, 988 P.2d at 627 (accepting the PDJ's determination that a suspended lawyer willfully violated his order of suspension where the evidence showed that the lawyer engaged in the conduct voluntarily, he knew he was attempting to resolve claims for clients, he knew he was providing legal services, and he was aware that engaging in this conduct was contrary to court order).

⁶⁸ *United States v. Greyhound Corp.*, 508 F.2d 529, 532 (7th Cir. 1974).

that Respondent was acting as a plaintiff on the basis of a property stake in the Adams County land. The next day, Judge Crabtree—having been advised of Respondent's ostensible property interest—issued an order that suggested Respondent was engaging in the unauthorized practice of law and directed him to show cause why he should not be dismissed as a plaintiff. Again, on October 11, Judge Crabtree warned Respondent that he would be dismissed as a plaintiff unless he responded to the show cause order. Although Judge Crabtree ultimately did not dismiss Respondent, these warnings adequately conveyed to Respondent that his ostensible property interest did not grant him license to file court documents for Herr. Nevertheless, Respondent continued to file court documents advocating for Herr, demonstrating willful disregard for the Colorado Supreme Court's injunction.

The PDJ also finds that Respondent willfully engaged in the unauthorized practice of law when he drafted the Jefferson County complaint. The Jefferson County case in large measure concerned the Golden duplex, in which Respondent had no interest under the partnership agreement. And as in the Adams County case, the complaint sought some forms of relief that would benefit Herr alone, such as the recovery of his alleged loan to Irma Schirrmeister.

Finally, the PDJ does not find Respondent's assertions that he believed he was complying with the injunction to be credible. As noted above, the PDJ does not deem Respondent to be a credible witness on the whole, and these particular assertions are self-serving statements that are not corroborated by other evidence.

In sum, the PDJ concludes beyond a reasonable doubt that Respondent willfully violated the Colorado Supreme Court's injunction by drafting the court documents filed in Adams County and Jefferson County.

Fine

C.R.C.P. 239(a) provides that if the PDJ makes a finding of contempt, the PDJ may recommend imprisonment or a fine between \$2,000.00 and \$5,000.00 for each incident of contempt. The People stipulate that Respondent's conduct in this case constitutes just one incident of the unauthorized practice of law. Several factors suggest that a fine should be significant here. Herr testified that he paid Respondent \$5,000.00 for his legal work,⁶⁹ and Herr clearly derived no benefit from that payment, as his complaints in the Adams County and Jefferson County cases were dismissed. Indeed, Herr paid over \$20,000.00 in attorney's fees and costs as a result of Respondent's inept legal services. The PDJ finds that Respondent's actions also caused harm by creating unnecessary work for the courts. In addition, the PDJ considers that this is not the first time Respondent has been held in

⁶⁹ When determining the appropriate fine in *In re Boyer*, the Colorado Supreme Court considered the amount of fees a suspended lawyer had collected while engaging in the unauthorized practice of law. 988 P.2d at 626.

contempt for the unauthorized practice of law and that Respondent has not paid the fines assessed in two earlier proceedings.

On the other hand, the PDJ does not find Respondent's contempt to be aggravated enough to merit imprisonment. As the People stipulate, the scope of Respondent's unauthorized practice of law is limited to one incident, in contradistinction to *Grimes*, where the Colorado Supreme Court ordered imprisonment based in part on the large number of cases the respondent handled.⁷⁰ The PDJ determines that a \$5,000.00 fine is the appropriate sanction.⁷¹

IV. **RECOMMENDATION**

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** Respondent in contempt and order Respondent to pay a **FINE** of \$5,000.00. The PDJ further **RECOMMENDS** that the Colorado Supreme Court **ADVISE** Respondent that he should seek a licensed attorney's advice if he considers undertaking any future activities that relate to the practice of law, and that he risks imprisonment if he is again found to have engaged in the unauthorized practice of law.⁷²

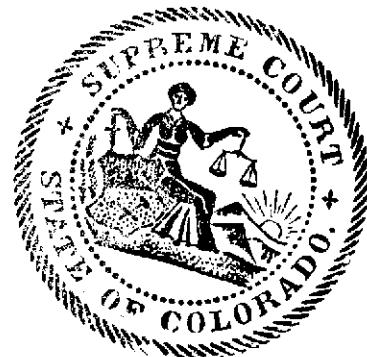
DATED THIS 7th DAY OF JULY, 2015.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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Christopher T. Ryan Colorado Supreme Court	Via Hand Delivery



⁷⁰ 654 P.2d at 826.

⁷¹ The People do not request an award of costs or restitution.

⁷² See C.R.C.P. 239(h) ("Nothing in this rule shall be construed . . . to limit the power of the Supreme Court to issue an injunction in lieu of or in addition to the imposition of a fine or any other remedy under these rules.").