

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 6, 2016 CASE NUMBER: 2015SA266
Original Proceeding in Unauthorized Practice of Law 15UPL040	
Petitioner: The People of the State of Colorado, v. Respondent: Randy Stofer.	Supreme Court Case No: 2015SA266
ORDER OF INJUNCTION	

Upon consideration of the Report of Hearing Master Under C.R.C.P. 236(a) with documents filed hereto, filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that Respondent, RANDALL C. STOFER, 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's Motion for Reconsideration of the Presiding Disciplinary Judge's order granting summary judgment shall be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that the Respondent, RANDALL C. STOFER is assessed costs in the amount of \$91.00. Said costs to be paid to the Office of Attorney Regulation Counsel, within (30) days from the date of this order.

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

BY THE COURT, JULY 6, 2016.

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: RANDALL C. STOFER	Case Number: 15SA266
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

On March 9, 2016, the Presiding Disciplinary Judge (“the PDJ”) entered summary judgment against Randall C. Stofer¹ (“Respondent”), finding that he engaged in the unauthorized practice of law by acting as a third-party insurance adjuster, drafting and filing pleadings for others, and negotiating on others’ behalf. The PDJ now recommends that the Colorado Supreme Court fine Respondent, order him to pay costs, and enjoin him from the unauthorized practice of law.

I. PROCEDURAL HISTORY

On October 8, 2015, Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”), filed a “Petition for Injunction” alleging that Respondent engaged in the unauthorized practice of law. Respondent responded to the petition on November 3, 2015. The Colorado Supreme Court referred the case to the PDJ on November 12, 2015, for “findings of fact, conclusions of law, and recommendations” pursuant to C.R.C.P. 234(f) and 236(a).

At a scheduling conference held on December 7, 2015, the People proposed that the PDJ establish a schedule governing dispositive motions in lieu of setting a hearing date, as Respondent had admitted the majority of the People’s allegations. The PDJ granted that request and established a briefing schedule, with which the parties complied.

On January 15, 2016, the People filed “Petitioner’s Motion for Summary Judgment.” Respondent filed his response on January 27, 2016, and the People replied two days later. The PDJ issued an order on February 4, 2016, directing Respondent to file an amended response

¹ Respondent is referred to as “Randy Stofer” in the People’s petition, the Colorado Supreme Court’s orders, and two earlier orders issued by the PDJ in this case. Because Respondent refers to himself in his filings as “Randall C. Stofer,” the PDJ is now doing the same.

because he had not complied with the PDJ's directions on briefing. In that order, the PDJ also explained that the People's citation of legal authority on the relevant issues in the case was correct and noted that Respondent could be exempt from a fine if he stipulated to entry of an injunction. Respondent filed an amended response to the motion for summary judgment on February 24, 2016. The People and Respondent also filed supplemental replies.

On March 9, 2016, the PDJ issued an "Order Granting Petitioner's Motion for Summary Judgment." The contents of that order are reproduced in a shortened form below. The People then filed "Petitioner's Requests Regarding Fine, Costs and Restitution" on March 10, 2016. Respondent filed his response on March 22, 2016, addressing not only the People's requests but also the PDJ's order granting summary judgment. The PDJ treats this portion of Respondent's response as a motion for reconsideration.

II. SUMMARY JUDGMENT RULING

The facts and analysis from the PDJ's order granting summary judgment are reproduced in condensed format here.

Facts

Respondent is a Colorado resident who is not licensed to practice law in Colorado or any other state.

In August 2014, Dr. Christopher Cook gave Toni Bullock an injection into her foot. Bullock later developed an infection that required treatment, including surgery. After she contacted Dr. Cook about his insurance, June Laird, Dr. Cook's counsel, contested Dr. Cook's liability. Bullock then discussed her claim with Respondent. Respondent offered to help her with asserting her claim against Dr. Cook. Respondent drafted a letter to Dr. Cook and sent it to Bullock for her review. In May 2015, Respondent sent the letter to Dr. Cook. In the letter, Respondent stated that he was providing "legal counsel" to Bullock on her claim for "expenses, pain, and suffering" caused by the injection and infection; maintained that Bullock sustained permanent damage to her foot due to Dr. Cook's negligence; and demanded \$66,000.00 to settle, failing which he would file a lawsuit. Respondent wrote separately to Laird in May 2015, stating that he had achieved success in representing another medical malpractice claimant; asserting that Dr. Cook was liable to Bullock; and expressing confidence in a favorable outcome should a lawsuit be filed. Respondent again threatened to file suit in a subsequent email to Laird. Bullock did not pay Respondent for these efforts.

A separate matter involves Daniel Renaud, who is Respondent's son-in-law. Renaud developed an infection after receiving an intravenous injection at a hospital, and the resulting surgeries left scars. Respondent filed a lawsuit on behalf of Renaud, styled *Daniel A. Renaud v. Health One Swedish Medical Center, Arapahoe County District Court*, case number 2013CV948. Respondent drafted and signed the complaint, which requested damages of \$250,000.00. He asserted that he was authorized to do so based on a power of attorney from Renaud. In the

lawsuit, Respondent drafted, signed, and filed a response to the hospital's answer, as well as a letter to the court and a response to the hospital's motion to dismiss. The court granted the motion to dismiss, without prejudice. Around the same time, Respondent negotiated a settlement for Renaud with the hospital's lawyer. Respondent received no compensation for his work.

Unauthorized Practice of Law Standards and Analysis

The Colorado Supreme Court has exclusive jurisdiction in Colorado to define the practice of law and to prohibit the unauthorized practice of law.² 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."³ Phrased somewhat more broadly, 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.⁴

Here, the People asserted that Respondent engaged in the unauthorized practice of law by acting as a third-party insurance adjuster for Bullock, by drafting and filing pleadings for Renaud, and by negotiating on Bullock's and Renaud's behalf. Respondent, meanwhile, admitted he acted as an agent for Renaud and that he wrote a letter for Bullock, but he asserted that his activities did not amount to the unauthorized practice of law. In the Renaud matter, he argued that his actions were authorized by the power of attorney. He said that in these matters he merely acted in good faith to support a family member and a family friend, rather than providing legal services as a business.

In his order granting summary judgment, the PDJ concluded without hesitation that Respondent transgressed the unauthorized practice of law rules. In the Bullock matter, Respondent helped to assert and defend Bullock's legal rights in an insurance matter.⁵ A layperson is not permitted to help another person assert an insurance claim against a third party's insurance company when doing so requires the exercise of legal skill or knowledge.⁶ Here, Respondent purported to engage in legal analysis by arguing that Dr. Cook had been negligent, that Dr. Cook was liable, and that Bullock's claim was worth \$66,000.00. Indeed,

² *People v. Adams*, 243 P.3d 256, 265 (Colo. 2010).

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

⁴ *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.

⁵ *Id.* (holding that acting in a representative capacity by defending another person's legal rights amounts to the unauthorized practice of law).

⁶ *Cincinnati Bar Ass'n v. Serhion*, 934 N.E.2d 332, 333-34 (Ohio 2010); *Dauphin Cnty. Bar Ass'n v. Mazzacaro*, 351 A.2d 229, 234 (Pa. 1976); *Linder v. Ins. Claims Consultants*, 560 S.E.2d 612, 617-22 (S.C. 2002).

Respondent explicitly asserted that he was providing “legal counsel” to Bullock, thereby holding himself out as Bullock’s legal representative.⁷

In the Renaud matter, Respondent drafted and signed legal pleadings—specifically, a complaint and an answer.⁸ Respondent was mistaken about the effect of a power of attorney. It is well-established that conferral of a power of attorney does not authorize an unlicensed person to practice law.⁹ Instead, a power of attorney permits an attorney in fact to make decisions regarding litigation—decisions that can in turn be implemented by a licensed attorney.¹⁰

Although Respondent may have acted on a good faith understanding of his legal obligations, his confusion about the applicable law does not immunize him in this proceeding. A person can engage in the unauthorized practice of law even if he or she has no intent to violate those rules.¹¹ Likewise, the fact that Respondent is not engaged in the business of providing legal advice is of no import. “[C]harging and receiving of a fee is unnecessary to constitute the practice of law.”¹²

Respondent’s Motion for Reconsideration

Respondent raises procedural and substantive objections to the PDJ’s summary judgment order. As a procedural matter, he argues that disputed issues of material fact remained that should have precluded entry of summary judgment. On a substantive level, Respondent asserts that he genuinely believed that Colorado’s statute governing powers of attorney authorized him to act as he did for Renaud. In addition, he contends that persons who in emergency situations have taken over the controls of airplanes or provided medical services, despite a lack of pilot or medical training, have not been charged with unlawful action. Respondent likens these emergency actions to the assistance he gave Renaud.

The PDJ does not find Respondent’s arguments compelling. Although the parties disputed certain issues of fact in their summary judgment briefings, the PDJ determined that none of those issues of fact were material to whether Respondent engaged in the unauthorized practice of law. To take but one issue raised in Respondent’s motion for

⁷ *Shell*, 148 P.3d at 171 (ruling that it is the unauthorized practice of law to hold oneself out as another person’s representative in a legal action).

⁸ *Shell*, 148 P.3d at 171 (holding that drafting legal pleadings constitutes the unauthorized practice of law).

⁹ See, e.g., *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”); *Christiansen v. Melinda*, 857 P.2d 345, 349 (Alaska 1993) (“A statutory power of attorney does not entitle an agent to appear pro se in his principal’s place.”) (cited with approval in *Adams*, 243 P.3d at 266); see also *Drake v. Superior Court*, 26 Cal. Rptr. 2d 829, 833 (Cal. App. 1994); *In re Conservatorship of Riebel*, 625 N.W.2d 480, 483 (Minn. 2001).

¹⁰ *Riebel*, 625 N.W.2d at 482.

¹¹ See *People ex rel. Atty. Gen. v. Hanna*, 127 Colo. 481, 482, 258 P.2d 492, 492 (1953).

¹² *Housing Authority of City of Charleston v. Key*, 572 S.E.2d 284, 285 (S.C. 2002); *In re Baker*, 85 A.2d 505, 514 (N.J. 1952).

consideration, in the Bullock matter it is legally insignificant whether Respondent himself contacted Bullock to discuss her claim or whether their discussion was initiated in some other manner. Thus, in his order granting summary judgment, the PDJ simply concluded that “Bullock [] discussed her claim with Respondent,” not that Respondent had contacted her.¹³ Further as noted above, an unauthorized practice of law determination does not depend on a finding that the layperson acted without good faith. As explained in the summary judgment order, the power of attorney statute may have allowed Respondent to act as an agent for other persons, but it did not grant him authority to carry out that role by practicing law. Finally, Respondent’s comparisons to anecdotes about emergency piloting and medical services are simply not apposite. The PDJ thus will deny Respondent’s motion for reconsideration.

III. FINE, RESTITUTION, 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 incident of the unauthorized practice of law. The People request that the PDJ recommend the minimum fine of \$250.00 for each of Respondent’s two instances of the unauthorized practice of law. In support of his argument that he should receive no fine, Respondent cites *Adams*,¹⁴ in which the Colorado Supreme Court elected to assess no fines against a nonlawyer who engaged in the unauthorized practice of law.

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.¹⁵ In this case, the unauthorized activities at issue took place over a limited timeframe, and Respondent has not previously been enjoined from the practice of law. For these reasons, the PDJ finds that the minimum fine is appropriate. The PDJ also finds that Respondent engaged in two instances of the unauthorized practice of law, such that a \$500.00 total fine is appropriate. In reaching these decisions, the PDJ finds that Respondent’s citation to *Adams* is not persuasive, since in that case the Colorado Supreme Court noted that the PDJ is directed by rule to recommend a fine while it is the Court’s prerogative under C.R.C.P. 237(a) to modify or reject the PDJ’s report.¹⁶ Moreover, the respondent in *Adams* was assessed over \$3,000.00 in costs,¹⁷ while the only requested costs here are \$91.00. The PDJ also notes that Respondent had the opportunity to avoid a fine by stipulating to an injunction in this case. Indeed, the PDJ previously informed Respondent of this possible course of action, noting that the People were citing the correct legal authorities regarding statutory powers of attorney and other applicable law.

¹³ Ord. Granting Summary J. at 2.

¹⁴ 243 P.3d at 267.

¹⁵ *Id.* at 267-68.

¹⁶ *Id.* at 267.

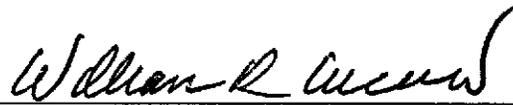
¹⁷ *Id.* at 268.

The People seek no award of restitution, but the People do ask that Respondent be ordered to pay \$91.00 in costs, which reflects the People's administrative fee. Relying on C.R.C.P. 237(a), the PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$91.00 in costs against Respondent.

IV. RECOMMENDATION

The PDJ **DENIES** Respondent's motion for reconsideration of the PDJ's order granting summary judgment. 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 also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay a **FINE** of \$500.00 and **COSTS** of \$91.00.

DATED THIS 29th DAY OF MARCH, 2016.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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