

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 10, 2015 CASE NUMBER: 2014SA374
Original Proceeding in Unauthorized Practice of Law, Office of Attorney Regulation Counsel, 2013UPL054	
<b>Petitioner:</b>  The People of the State of Colorado,  <b>v.</b>  <b>Respondent:</b>  James Hustad.	Supreme Court Case No: 2014SA374
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. 239(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that JAMES HUSTAD shall be, and the same hereby is, found to be in CONTEMPT OF COURT.

IT IS FURTHER ORDERED that JAMES HUSTAD be fined in the amount of \$2000.00.

BY THE COURT, AUGUST 10, 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	
<b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> JAMES HUSTAD	<hr/> Case Number: <b>14SA374</b>
<b>ORDER ENTERING DEFAULT JUDGMENT PURSUANT TO C.R.C.P. 55(b)          AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 239(a)</b>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on “Petitioner’s Motion for Default Judgment” filed by Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”), on May 19, 2015. The People ask the PDJ to enter default judgment against James Hustad (“Respondent”), who has not responded to the People’s motion.

#### **I. PROCEDURAL HISTORY**

On July 7, 2010, the Colorado Supreme Court enjoined Respondent from the practice of law in case number 10SA153. On December 15, 2014, the People filed a “Petition for Contempt Citation” with the Colorado Supreme Court, alleging that Respondent had violated the order of injunction. Four days later, the Colorado Supreme Court issued a “Citation to Show Cause,” directing Respondent to show cause why he should not be held in contempt. The People served Respondent with the petition and the show cause order by certified mail in January 2015 and by personal service in February 2015, but Respondent did not respond to the petition or the show cause order.

On April 6, 2015, the Colorado Supreme Court referred this matter to the PDJ. The next day, the PDJ issued an “Order of Hearing Master Pursuant to C.R.C.P. 238-239,” directing Respondent to answer the People’s petition no later than April 21, 2015, and warning him that if he failed to do so, the PDJ might find as a matter of law that the claims alleged in the People’s petition had been proved. Respondent did not comply with that order. On May 8, 2015, the PDJ entered default against Respondent pursuant to C.R.C.P. 55(a). By that order, the PDJ deemed admitted the allegations in the petition for contempt, including the allegation that Respondent acted in contempt of the Colorado Supreme Court’s injunction.

In their pending motion for default judgment, the People ask the PDJ to recommend that the Colorado Supreme Court hold Respondent in contempt, impose a \$2,000.00 fine, and order payment of \$1,065.10 in costs.

## **II. PETITIONER'S MOTION FOR 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 and 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.<sup>1</sup> Accordingly, the PDJ **GRANTS** "Petitioner's Motion for Default Judgment."

## **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. 239(a). This report contains an abbreviated summary of the factual allegations detailed in the People's "Petition for Contempt Citation," all of which the PDJ deemed admitted by entering default.

### **Legal Standards Governing Contempt and the Unauthorized 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 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."<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup>

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."<sup>5</sup> Phrased somewhat more broadly, a layperson who acts "in a representative capacity in

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<sup>1</sup> Pet'r's Mot. for Default J. Ex. B.

<sup>2</sup> 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).

<sup>3</sup> C.R.C.P. 107(a)(2)-(3).

<sup>4</sup> *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (quotation omitted).

<sup>5</sup> *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

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.<sup>6</sup>

### Factual Findings and Analysis

Respondent, who is a disbarred Arizona lawyer, is not licensed to practice law in Colorado or any other state.<sup>7</sup> In a lawful order issued on July 7, 2010, the Colorado Supreme Court enjoined him from the unauthorized practice of law.<sup>8</sup> Respondent signed a stipulation in August 2010 in which he acknowledged receipt of the injunction order, so he therefore knew of the order.<sup>9</sup> He also had the ability to comply with the injunction.<sup>10</sup> Nevertheless, Respondent willfully refused to abide by the order, as explained below.<sup>11</sup>

Respondent and his wife, Deborah Hustad, owned a residence in Colorado Springs, which they leased to James Wollett.<sup>12</sup> Wollett moved out in June 2013, with ten months of the lease term remaining.<sup>13</sup> Ms. Hustad brought an action against Wollett in El Paso County District Court, seeking \$17,500.00 in rent for the balance of the lease term and \$10,000.00 in damages to the house.<sup>14</sup> Respondent had quitclaimed title to the residence to his wife after the lease was signed, and he was not a party to the suit.<sup>15</sup>

In August 2013, Ms. Hustad filed a motion for summary judgment.<sup>16</sup> Respondent drafted or assisted in drafting the motion, which contained legal argument.<sup>17</sup>

At Wollett’s deposition in September 2013, both Ms. Hustad and Respondent appeared.<sup>18</sup> Before the deposition started, Respondent negotiated with Wollett about settling the case on behalf of Ms. Hustad.<sup>19</sup> Among other things, Respondent demanded payment from Wollett and threatened that Ms. Hustad would garnish his wages.<sup>20</sup> Wollett then agreed to settle.<sup>21</sup>

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<sup>6</sup> See *Denver Bar Ass’n v. Pub. Utils. Cmm’n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); *Shell*, 148 P.3d at 171.

<sup>7</sup> Pet. ¶¶ 1-2.

<sup>8</sup> Pet. ¶¶ 2, 4.

<sup>9</sup> Pet. ¶¶ 3, 5.

<sup>10</sup> Pet. ¶ 6.

<sup>11</sup> Pet. ¶ 8.

<sup>12</sup> Pet. ¶¶ 9-10.

<sup>13</sup> Pet. ¶ 12.

<sup>14</sup> Pet. ¶ 13.

<sup>15</sup> Pet. ¶¶ 15-16.

<sup>16</sup> Pet. ¶ 17.

<sup>17</sup> Pet. ¶¶ 18-19.

<sup>18</sup> Pet. ¶ 21.

<sup>19</sup> Pet. ¶¶ 22-23.

<sup>20</sup> Pet. ¶¶ 26-27.

<sup>21</sup> Pet. ¶ 28.

After going on record, Respondent asked questions, and Wollett answered them.<sup>22</sup> Respondent asked Wollett to stipulate to entry of judgment for \$27,500.00 plus costs, and Wollett agreed.<sup>23</sup> At Respondent's suggestion, Wollett also agreed to stipulate to garnishment or a wage assignment to pay the judgment.<sup>24</sup> Later in the deposition, Respondent warned Wollett: "If at any time we don't receive the money by the 6<sup>th</sup> of the month, we have the right to use any and all legal remedies to collect the judgment."<sup>25</sup> Also during the deposition, Ms. Hustad asked what the interest rate was for interest on the judgment, and Respondent answered that it was the rate set by law.<sup>26</sup>

Soon after the deposition, Ms. Hustad filed a copy of the deposition transcript and a proposed form of judgment, as well as a notice of withdrawal of her motion for summary judgment.<sup>27</sup> Respondent drafted or assisted in drafting the notice.<sup>28</sup> Wollett then filed an objection, claiming that Respondent was actively representing Ms. Hustad and complaining about Respondent's hostility at the deposition and his subsequent threatening voicemails.<sup>29</sup> The court denied Ms. Hustad's request for entry of judgment and ordered her, Respondent, and Wollett to attend a hearing on October 25, 2013.<sup>30</sup>

Ms. Hustad then filed a motion to recuse the judge, which Respondent drafted or assisted in drafting.<sup>31</sup> The motion cited case law and the Code of Judicial Conduct and argued that the judge had shown bias and prejudice.<sup>32</sup>

After denying the motion to recuse, the court held a hearing on October 25, 2013, which Ms. Hustad and Wollett attended but which Respondent did not attend.<sup>33</sup> Because Respondent failed to appear as ordered, the court issued a show cause order and directed Respondent to take no action on the lawsuit.<sup>34</sup> Respondent never appeared in response to the show cause order.<sup>35</sup>

The court ultimately entered partial summary judgment in Ms. Hustad's favor; Wollett paid her \$17,500.00; and the case was dismissed in January 2014.<sup>36</sup>

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<sup>22</sup> Pet. ¶ 30.

<sup>23</sup> Pet. ¶¶ 31, 33.

<sup>24</sup> Pet. ¶¶ 35-36.

<sup>25</sup> Pet. ¶ 45.

<sup>26</sup> Pet. ¶¶ 37-39.

<sup>27</sup> Pet. ¶¶ 49-50.

<sup>28</sup> Pet. ¶ 51.

<sup>29</sup> Pet. ¶¶ 54-59.

<sup>30</sup> Pet. ¶¶ 63-64.

<sup>31</sup> Pet. ¶¶ 65-66.

<sup>32</sup> Pet. ¶¶ 67-68.

<sup>33</sup> Pet. ¶¶ 70-73.

<sup>34</sup> Pet. ¶¶ 79, 81.

<sup>35</sup> Pet. ¶ 84.

<sup>36</sup> Pet. ¶¶ 88-90.

Here, the petition demonstrates that (1) the Colorado Supreme Court issued a lawful order enjoining Respondent from the unauthorized practice of law; (2) Respondent knew of the order; (3) Respondent was able to comply with the order; and (4) Respondent willfully refused to comply with the order. By filing court documents for Ms. Hustad, negotiating a settlement with Wollett, and conducting a deposition, among other actions, Respondent engaged in the practice of law. These actions are not excused on the basis of Respondent's marriage to Ms. Hustad.<sup>37</sup> The petition therefore establishes that Respondent is guilty of contempt.

### **Fine, Costs, and Restitution**

C.R.C.P. 239(a) provides that, if the PDJ makes a finding of contempt but does not recommend imprisonment, then the PDJ must recommend that the Colorado Supreme Court impose a fine between \$2,000.00 and \$5,000.00 for each incident of contempt. Here, the People request imposition of a fine of \$2,000.00 because this is Respondent's first contempt proceeding. The PDJ agrees that a \$2,000.00 fine is appropriate.

The People also request that Respondent be assessed costs of \$1,065.10.<sup>38</sup> The Colorado Supreme Court held in *Shell* that "costs and fees cannot be assessed when the court imposes punitive sanctions against a contemnor, because C.R.C.P. 107(d)(1) does not expressly authorize their assessment."<sup>39</sup> That holding reflects an inconsistency with C.R.C.P. 239(g), which states that the punishment the Colorado Supreme Court may impose can include the assessment of costs. Because the *Shell* decision postdates the adoption of C.R.C.P. 239(g), the PDJ interprets the Colorado Supreme Court's pronouncement in *Shell* as a binding ruling that costs may not be imposed in a punitive contempt case involving the unauthorized practice of law.

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

### **IV. RECOMMENDATION**

The PDJ therefore **RECOMMENDS** that the Colorado Supreme Court **FIND** Respondent in contempt of court and **FINE** Respondent \$2,000.00.

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<sup>37</sup> See, e.g., *Matter of Tarletz*, 165 Ariz. 243, 243-45, 798 P.2d 381, 381-83 (Ariz. 1990) (determining that a suspended lawyer engaged in the unauthorized practice of law when, among other actions, she appeared in court and signed documents on behalf of her husband in a support matter); *Matter of Disciplinary Proceedings Against Kells*, 493 N.W.2d 723, 726-28 (Wis. 1993) (finding that a suspended lawyer engaged in the practice of law by representing his wife in a bankruptcy proceeding).

<sup>38</sup> The People's statement of costs is marked as exhibit B to their motion for default judgment.

<sup>39</sup> 148 P.3d at 178.

DATED THIS 22<sup>nd</sup> DAY OF JUNE, 2015.



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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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