

Colorado Supreme Court 101 West Colfax Avenue, Suite 800 Denver, CO 80202	
Original Proceeding in Contempt, 11UPL118	
<b>Petitioner:</b>  The People of the State of Colorado,  v.  <b>Respondent:</b>  Stephen C. Owen.	Supreme Court Case No: 2012SA145
<b>ORDER OF COURT</b>	

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,

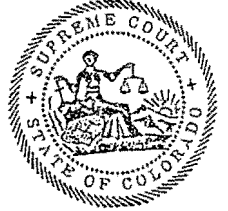
IT IS ORDERED that pursuant to 239(g) this court ADOPTS the report of the Presiding Disciplinary Judge.

IT IS FURTHER ORDERED that Respondent, STEPHEN C. OWEN, 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 the Supreme Court finds STEPHEN C. OWEN in contempt of the April 7, 2011 order of injunction.

IT IS FURTHER ORDERED that the Respondent, STEPHEN C. OWEN be  
fined \$4000.00 payable within (60) days of the date of this order.

BY THE COURT, DECEMBER 10, 2012.



Case Number: 2012SA145

Caption: People v. Owen, Stephen

**CERTIFICATE OF SERVICE**

Copies mailed via the State's Mail Services Division on December 11, 2012.

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Stephen C Owen  
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William R Lucero  
PRESIDING DISCIPLINARY  
JUDGE  
1560 Broadway Ste 675  
Denver, CO 80202

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN CONTEMPT BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202		FILED IN THE SUPREME COURT  OCT 25 2012  OF THE STATE OF COLORADO. Christopher T. Ryan, Clerk
<b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO		Case Number: <b>12SA145</b>
<b>Respondent:</b> STEPHEN C. OWEN		
<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 September 11, 2012. The People ask the PDJ to enter default judgment pursuant to C.R.C.P. 55(b) against Stephen C. Owen (“Respondent”). Respondent has not responded to the People’s motion.

### **I. PROCEDURAL HISTORY**

On May 14, 2012, the People filed a “Petition for Contempt Citation” with the Colorado Supreme Court (“the Supreme Court”), alleging Respondent engaged in the unauthorized practice of law in violation of a previous court order dated April 7, 2011, which was issued in case number 10SA066. The Supreme Court issued a “Citation to Show Cause” on May 16, 2012, directing Respondent to show cause in writing within twenty days after service why he should not be held in contempt of court. Respondent was personally served with the petition and the citation on July 30, 2012,<sup>1</sup> yet he never responded.

The Supreme Court issued an order on August 22, 2012, referring this matter to the PDJ “for entry of default and for findings and recommendations concerning contempt, a fine and costs.” On August 29, 2012, the PDJ entered default, thereby deeming the allegations in the petition admitted and finding that Respondent engaged in willful contempt of the Supreme Court’s prior order of injunction. The next day, the People filed a statement of costs, reflecting expenditures in the amount of \$203.50 for service of process and for an administrative fee. On September 11, 2012, the People filed “Petitioner’s

<sup>1</sup> The petition and citation were also sent by certified mail to Respondent in May 2012, but the return receipt does not make the specific date of delivery legible.

Request for Recommendation of a Fine,” asking the PDJ to recommend that the Supreme Court impose a fine of \$5,000.00.

## **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 § 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;<sup>2</sup> and submitting an affidavit by Betty A. Southall, establishing the harm Respondent’s conduct caused.<sup>3</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 Supreme Court pursuant to C.R.C.P. 239(a).

### **Factual Findings**

Respondent is not licensed to practice law in the State of Colorado or any other state.<sup>4</sup> On April 7, 2011, the Supreme Court issued a lawful order enjoining Respondent from the unauthorized practice of law in Colorado.<sup>5</sup> Respondent’s counsel was served with the order of injunction on May 6, 2011, and he forwarded a copy of that order to Respondent the next day.<sup>6</sup> Respondent knew no later than May 8, 2011, that he had been enjoined from the unauthorized practice of law.<sup>7</sup>

Yet in early October 2011, Respondent prepared a “Motion for Emergency Extension of Time” for filing in *Betty Southall, et al. v. Estelle Griffey*, Colorado Court of Appeals case number 10CA662.<sup>8</sup> That document requested a thirty-day extension of time to permit Ms. Griffey to mourn the death of a relative.<sup>9</sup> The motion contained a line for Respondent’s signature.<sup>10</sup> Respondent filed that motion on October 8, 2011.<sup>11</sup> About ten days later, Respondent prepared another pleading, entitled “Appellee’s Emergency Motion for 30-Day Continuance and Motion to Reconsider ‘Defendant Moves to Toll Court Action re: Motion for

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<sup>2</sup> Petitioner’s M. for Default J. Ex. A.

<sup>3</sup> Petitioner’s M. for Default J. Ex. B.

<sup>4</sup> Pet. for Contempt Citation ¶ 1.

<sup>5</sup> Pet. for Contempt Citation ¶¶ 2-3.

<sup>6</sup> Pet. for Contempt Citation ¶¶ 5-6.

<sup>7</sup> Pet. for Contempt Citation ¶ 7.

<sup>8</sup> Pet. for Contempt Citation ¶ 12.

<sup>9</sup> Pet. for Contempt Citation ¶¶ 13, 15.

<sup>10</sup> Pet. for Contempt Citation ¶ 16.

<sup>11</sup> Pet. for Contempt Citation ¶ 17.

Rehearing.”<sup>12</sup> Although the signature block contained a line for Ms. Griffey’s signature, the pleading was in the same style as other pleadings authored by Respondent.<sup>13</sup>

After the case was remanded to the Montrose County District Court, Ms. Griffey filed four pleadings in that court: “Defendant’s Notice of Complaint, Vagueness of Order and/or Mandate and Motion for New Order and/or Mandate,” “Answer and Counterclaim,” “Defendant’s Response to Court Order of 1/17/12, etc.,” and “Response to Plaintiff’s February 2, 2012 Motion for Extension of Time.”<sup>14</sup> Each of these pleadings had a signature line for Ms. Griffey but matched the style of pleadings authored by Respondent.<sup>15</sup> The four pleadings made legal argument and cited statutes, case law, and other legal authorities.<sup>16</sup> Respondent authored these pleadings, which Ms. Griffey lacked the education or experience to have prepared herself.<sup>17</sup>

On the date that a setting conference had been scheduled in Ms. Griffey’s case, Respondent called the court in an attempt to further represent Ms. Griffey, but a clerk informed him that he could not appear for Ms. Griffey.<sup>18</sup>

### **Legal Standards Governing the Unauthorized Practice of Law**

The Supreme Court may hold a respondent in contempt for disobeying a court order—including an injunction against the unauthorized practice of law—pursuant to C.R.C.P. 107 and C.R.C.P. 238-239. As pertinent here, the 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>19</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>20</sup>

In order for the Supreme Court 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>21</sup>

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<sup>12</sup> Pet. for Contempt Citation ¶ 18.

<sup>13</sup> Pet. for Contempt Citation ¶ 19.

<sup>14</sup> Pet. for Contempt Citation ¶¶ 20-21.

<sup>15</sup> Pet. for Contempt Citation ¶ 22.

<sup>16</sup> Pet. for Contempt Citation ¶ 23.

<sup>17</sup> Pet. for Contempt Citation ¶¶ 24-25.

<sup>18</sup> Pet. for Contempt Citation ¶¶ 27-28.

<sup>19</sup> C.R.C.P. 107(a)(4). Punitive contempt is distinguishable from remedial contempt, which instead is imposed to “force compliance with a lawful order or to compel performance of an act.” C.R.C.P. 107(a)(5).

<sup>20</sup> C.R.C.P. 107(a)(2) & (3).

<sup>21</sup> *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (quotation omitted).

The Supreme Court exercises exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Colorado.<sup>22</sup> The purpose of the Supreme Court's restrictions on the practice of law is to protect the public from receiving incompetent legal advice from unqualified individuals.<sup>23</sup> "[A]n 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>24</sup>

Here, the People's petition establishes that the Supreme Court lawfully enjoined Respondent from the unauthorized practice of law, that Respondent knew of that order, and that he was able to comply with that order by refraining from the practice of law. Furthermore, the petition demonstrates that Respondent willfully violated the order by drafting legal pleadings for Ms. Griffey's use in a judicial proceeding, thereby engaging in the unauthorized practice of law. As such, the People have demonstrated that Respondent offended the dignity and authority of the Supreme Court by violating its order of injunction. Respondent therefore should be held in contempt.

#### **Fine and Costs**

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 Supreme Court impose a fine between \$2,000.00 and \$5,000.00 for each incident of contempt.<sup>25</sup> The People support their request for a \$5,000.00 fine with the affidavit of Betty A. Southall.<sup>26</sup> Ms. Southall avers that Respondent's representation of Ms. Griffey made resolution of the case very difficult.<sup>27</sup> According to Ms. Southall, Respondent's filing of unsubstantiated pleadings delayed resolution of the matter, forced her to expend thousands of dollars in additional attorney's fees and costs, and caused her emotional distress.<sup>28</sup>

In *People v. Shell*, the Supreme Court imposed a total fine of \$6,000.00 for the respondent's two instances of the unauthorized practice of law, which

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<sup>22</sup> C.R.C.P. 228.

<sup>23</sup> *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982).

<sup>24</sup> *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006); *Title Guar. Co. v. Denver Bar Ass'n*, 135 Colo. 423, 434, 312 P.2d 1011, 1016 (1957) (holding that preparation of legal documents for others amounts to the unauthorized practice of law); see also C.R.C.P. 201.3(2)(a)-(f) (defining the practice of law).

<sup>25</sup> Although C.R.C.P. 238(c) indicates that contempt is punishable by either a fine or by imprisonment, the Supreme Court has referred this matter to the PDJ for a recommendation only as to a fine, thereby indicating that imprisonment is not among the sanctions to be contemplated by the PDJ here.

<sup>26</sup> Pet. for Contempt Citation Ex. B.

<sup>27</sup> Pet. for Contempt Citation Ex. B.

<sup>28</sup> Pet. for Contempt Citation Ex. B.

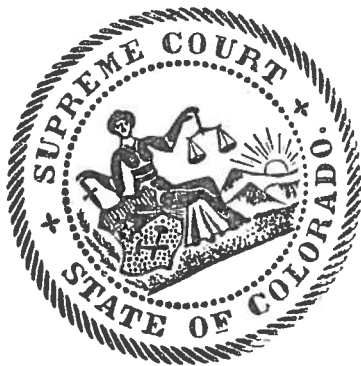
involved extensive legal advocacy on behalf of two separate parties in dependency and neglect proceedings.<sup>29</sup> Here, Respondent engaged in a comparable level of advocacy to that in *Shell*, but he did not appear in this proceeding to contest or explain his conduct. Moreover, Ms. Southall's affidavit shows that Respondent's unauthorized practice of law caused significant harm. Balancing these considerations against the fact that Respondent has not previously been held in contempt of court,<sup>30</sup> the PDJ believes it is appropriate to impose a relatively substantial fine of \$4,000.00 for Respondent's contemptuous conduct.

The 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>31</sup> That holding reflects an inconsistency with C.R.C.P. 239(g), which states that the punishment the Supreme Court may impose may include the assessment of costs, as well as an inconsistency with the Supreme Court's order in this matter directing the PDJ to make "findings and recommendations concerning contempt, a fine *and costs*."<sup>32</sup> Nevertheless, the PDJ interprets the 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.

#### IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Supreme Court **FIND** Respondent in contempt of court and order Respondent to pay a **FINE** of \$4,000.00.

DATED THIS 24<sup>th</sup> DAY OF OCTOBER, 2012.



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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

<sup>29</sup> 148 P.3d at 178.

<sup>30</sup> See *In re Boyer*, 988 P.2d at 626.

<sup>31</sup> 148 P.3d at 178.

<sup>32</sup> See Colorado Supreme Court, "Order of Court," case number 12SA145 (Aug. 22, 2012) (emphasis added).



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