Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	RECEIVED JAN 17 2013 ATTORNEY REGULATION
Original Proceeding in Unauthorized Practice of Law, 10UPL058	
Petitioner: The People of the State of Colorado, v. **Respondent:** Douglas Bruce.	Supreme Court Case No: 2011SA154

ORDER OF COURT

Upon consideration of the Petition for Injunction, the Report of Hearing Master Pursuant to C.R.C.P. 236(a), the Objections to the Report of the Hearing Master, the Opening, Answer and Reply Briefs filed, filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Respondent, DOUGLAS BRUCE shall be, and the same hereby is, ENJOINED from engaging in the unauthorized practice of law.

IT IS FURTHER ORDERED that said Respondent, DOUGLAS BRUCE is assessed costs in the amount of $2717.06. 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 a fine be imposed in the amount of $1000.00.

BY THE COURT, EN BANC, JANUARY 17, 2013.

Case Number: 2011SA154
Caption: People v Bruce, Douglas

CERTIFICATE OF SERVICE

Copies mailed via the State's Mail Services Division on January 17, 2013. hdc

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SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DOUGLAS BRUCE	Case Number: **11SA154**
REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)	

This matter is before the Presiding Disciplinary Judge ("the PDJ") on an order of the Colorado Supreme Court ("the Supreme Court") appointing the PDJ as a hearing master and directing the PDJ to prepare a report setting forth "findings of fact, conclusions of law, and recommendations" pursuant to C.R.C.P. 234(f) and 236(a).

I. SUMMARY

In 2010, Douglas Bruce ("Respondent") and several other Colorado Springs residents formed a committee with the goal of amending the charter of the City of Colorado Springs through a ballot measure. Frustrated by the delay of their efforts to collect the voter signatures needed to place the charter amendment on the ballot, Respondent and two other committee members filed a series of four complaints against the city in El Paso County District Court. The Office of Attorney Regulation Counsel ("the People") allege that Respondent—who is not a licensed attorney—engaged in the unauthorized practice of law by drafting two complaints for fellow committee members and by handing one of the members a note recommending specific legal arguments during a judicial hearing. The PDJ concludes the People have proved that Respondent practiced law without a license. Accordingly, the PDJ recommends that the Supreme Court enjoin Respondent from the unauthorized practice of law, fine him $1000.00, and order him to pay $2717.06 in costs.

II. PROCEDURAL HISTORY

On May 23, 2011, the People filed with the Supreme Court a "Petition for Injunction," alleging that Respondent engaged in the unauthorized practice of law. After the Supreme Court issued an order to show cause on May 26, 2011,

Respondent answered the order and petition on July 8, 2011. The Supreme Court referred the matter to the PDJ on August 11, 2011.

During an at-issue conference on October 11, 2011, the PDJ scheduled a one-day hearing in this case for January 27, 2012. The PDJ denied "Petitioner's Request for an Order Directing Respondent to Comply with C.R.C.P. 8(b)" on October 25, 2011.[1] On November 16, 2011, the PDJ rejected "Petitioner's Forthwith Motion to Compel Respondent to Make Rule 26 Disclosures,"[2] and the next day he denied "Petitioner's Motion for Judgment on the Pleadings with Regard to Defense of Exercise of First Amendment Rights."

The PDJ issued on November 30, 2011, an "Order Continuing Status Conference and Denying Respondent's [Request] to Stop Petitioner's Attempts to Depose or Subpoena Potential Witnesses." At the rescheduled status conference on January 5, 2012, Respondent said he intended to invoke the constitutional privilege against self-incrimination during his upcoming deposition by the People. The PDJ advised Respondent that using the exercise of this privilege against a criminal defendant is severely restricted, but a trier of fact in a civil proceeding may draw an adverse inference from a witness's refusal to answer certain questions at a deposition.[3] In addition, the PDJ recommended that Respondent seek legal advice about whether to invoke the privilege against self-incrimination.

The People filed "Petitioner's Motion for Partial Summary Judgment Regarding Facts Relevant to Respondent's Selection and Preparation of Complaints for Others" on November 18, 2011, followed on December 5, 2011, by "Petitioner's Motion for Partial Summary Judgment Regarding Facts Relevant to Respondent's Giving Legal Advice to Others." Respondent filed responses on November 28, 2011, and December 27, 2011, respectively.

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[1] The PDJ denied the People's motion for reconsideration of this ruling on December 7, 2011.

[2] On January 18, 2012, the PDJ denied the People's motion for reconsideration of his decision.

[3] The PDJ's comments were memorialized in a January 5, 2012, "Order Continuing Pre-Hearing Conference." It appears that Respondent ultimately chose to answer the People's questions at his deposition. At the unauthorized practice of law hearing, the PDJ asked whether Respondent had objected on self-incrimination grounds to answering any specific questions at the deposition, to which he replied only that he believed the entire case was "surreal." When a civil litigant claims the Fifth Amendment privilege against self-incrimination, "[a] trial court must carefully balance the interests of the party claiming protection against self-incrimination and the adversary's entitlement to equitable treatment." *Steiner v. Minn. Life Ins. Co.*, 85 P.3d 135, 141 (Colo. 2004) (quotation omitted). Prior to engaging in that balancing test, however, the court first must find that the party properly claimed the privilege. *Id.* The correct means for a civil plaintiff to invoke the Fifth Amendment privilege is to raise the privilege "in response to specific questions." *Id.* at 141 n.5. The same principles apply to civil defendants, as "a blanket refusal to answer questions does not suffice to raise constitutional questions." *United States v. Carroll*, 567 F.2d 955, 957 (10th Cir. 1977).

The People's first motion asked the PDJ, pursuant to C.R.C.P. 56(d), to deem certain facts established concerning Respondent's alleged preparation of complaints for others. In ruling on the motion, the PDJ disregarded the attached exhibits because they were unauthenticated and Respondent challenged their admissibility. As a consequence, the People's motion lacked evidentiary support, and the PDJ denied it on January 18, 2012.

The following day, the PDJ granted the People's second motion for partial summary judgment. The PDJ determined that the motion and its supporting affidavit were sufficient under C.R.C.P. 56(d) to establish certain facts for purposes of the hearing.[4]

At the unauthorized practice of law hearing on January 27, 2012, the PDJ heard testimony from Janet Clouse, Ean R. Schulte, Nate Riley, Cindy Conway,[5] Judge Ronald G. Crowder, Judge David Miller, and Respondent. The People filed affidavits of due diligence documenting their extensive yet unsuccessful efforts to serve subpoenas on Helen P. Collins, Douglas N. Stinehagen, Bruce J. Nozolino, and John W. Heimsoth, none of whom appeared to testify at the hearing. During the hearing, the PDJ admitted the People's exhibits 16, 19-21, 27, 27.1, 29, 33, 36, 36.1, 39, 39.1, 43-45, 47, 50-51, 55, and 57-59.[6]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Findings

Respondent is not licensed to practice law in the State of Colorado. However, in the 1970s, he attended law school at the University of Southern California, was admitted to the California bar, and practiced law in California. After moving to Colorado in the 1980s, Respondent resigned his California bar license and never sought admission in this state.

This case centers on Respondent's efforts in 2010 to seek voter approval of a proposal to institute a "strong mayor" form of government in the City of Colorado Springs ("the City"). Respondent and several like-minded individuals—Janet Clouse, Ean R. Schulte, Bruce J. Nozolino, John W. Heimsoth, Helen P. Collins, and Douglas N. Stinehagen—formed a "Petitioners' Committee" with the aim of garnering enough voter signatures to place an amendment to the City's charter on the ballot in the November 2010 or April 2011 election.[7] The committee members signed a "Statement of Intent to

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[4] The facts deemed admitted pursuant to C.R.C.P. 56(d) are presented in the factual findings section below, with citations to the PDJ's order granting partial summary judgment.

[5] Cindy Conway testified by telephone, but the other witnesses testified in person.

[6] Exhibits 27.1, 36.1, and 39.1 are copies of exhibits 27, 36, and 39, respectively, to which the People added highlights.

[7] Ex. 19 at Ex. 1.

Circulate a Petition" before a notary on June 8, 2010, and Respondent delivered the charter amendment petition to the City Clerk's office that same day.[8]

While filing the petition, Respondent asked how the City intended to process it.[9] Deputy City Clerk Cindy Conway responded that pursuant to the City code, an initiative review committee would confer about the petition[10] and several weeks later the title board would meet to set a ballot title.[11] To no avail, Respondent objected, arguing this procedure would force the committee to wait at least several weeks before collecting voter signatures.[12]

On June 14, 2010, Respondent filed a complaint against the City in El Paso County District Court *("Bruce I").*[13] In the complaint, which he filed in his own name, Respondent asserted he was a member of and the representative for the Petitioners' Committee.[14] He challenged the City's decision to submit the petition to the initiative review committee and title board before allowing the Petitioners' Committee to gather voter signatures.[15] He also argued that the charter petition process is governed not by the City code, but rather by C.R.S. § 31-2-210, the Municipal Home Rule Act.[16] Relying on that statute, which states that a petition to amend a home rule charter "shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent,"[17] Respondent contended the City should have immediately given the Petitioners' Committee blank petition forms on which they could collect voter signatures.[18] He sought a judicial declaration that charter amendment petitions are governed by C.R.S. § 31-2-210, and he asked the court both to enjoin the City from delaying circulation of the petition and to order the City to deliver blank petition forms to him.[19]

Judge David A. Gilbert issued an order denying Respondent's request for injunctive or declaratory relief on June 18, 2010.[20] Judge Gilbert discerned no conflict between the City code and C.R.S. § 31-2-210, explaining that the City

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[8] Ex. 19 ¶ 3.
[9] *Id.* ¶ 5.
[10] An initiative review committee's task is "to comment on requirements for voter initiatives such as the rules pertaining to simplicity and clarity." Ex. 21 at 2.
[11] Ex. 19 ¶ 5.
[12] *Id.* ¶¶ 5-6.
[13] *Id.* at 1. (*Douglas Bruce v. City of Colorado Springs; Does I-V*, El Paso County District Court, case number 10CV260).
[14] *Id.* ¶ 3.
[15] *Id.* ¶¶ 5-7.
[16] Respondent relied on several other authorities, including article XX, section 9 of the Colorado Constitution, which governs the adoption of home rule authority. Ex. 19 ¶¶ 6-10.
[17] Ex. 19 ¶ 6.
[18] *Id.* ¶¶ 7, 11.
[19] *Id.* ¶¶ 20-21.
[20] Ex. 21.

code establishes a process that should take place *before* the statutorily governed procedure for filing a statement of intent.[21]

Respondent did not appeal Judge Gilbert's decision, reasoning that any favorable appellate ruling would be decided too late to enable the Petitioners' Committee to place the charter amendment on the ballot in either of the two upcoming elections. Instead, on July 29, 2010, Respondent filed a second complaint in the same court, once again seeking injunctive and declaratory relief in his own name as a representative of the Petitioners' Committee *("Bruce II")*.[22] The complaint is substantially similar to his first complaint but includes several new elements.[23]

The City moved to dismiss the case, arguing that Respondent had filed the same complaint in Judge Gilbert's division.[24] Judge Theresa M. Cisneros, to whom the new case had been assigned, entered a minute order on August 9, 2010, reading: "Court Grants City's Motion To Dismiss. [Plaintiff's] Remedy Was To Appeal Judge Gilbert's Ruling, Not To File A New Case. This Case Is Barred By The Doctrine Of Collateral Estoppel And Is Therefore Dismissed."[25]

Respondent then met at his home with two members of the Petitioners' Committee, Helen P. Collins ("Collins") and Douglas Stinehagen ("Stinehagen"). As Respondent related to the PDJ, these members sought his assistance as their friend in filing complaints against the City in their own names. Collins and Stinehagen told Respondent they lacked the legal skills necessary to draft wholly new complaints protesting the City's actions. In response, Respondent offered to let them "copy" his complaint in *Bruce II* for their own use. While his friends remained in a separate room, he revised the *Bruce II* complaint on his computer. Respondent created two new drafts, one each for Collins and Stinehagen, which included the following revisions to the *Bruce II* complaint:

- Respondent substituted Collins's and Stinehagen's names for his own.[26]
- He deleted language regarding his authorship of the charter amendment and his role as representative of the Petitioners' Committee, instead referring to Collins's and Stinehagen's membership on the committee, respectively.[27]

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[21] *Id.* at 5-7.

[22] Ex. 27. (*Douglas Bruce v. City of Colorado Springs; Does I-V*, El Paso County District Court, case number 10CV317).

[23] For instance, the second complaint discusses the petition a separate group had filed with the City, it critiques Judge Gilbert's decision, and it directs the court's attention to a revised charter amendment proposal. Ex. 27 ¶¶ 3, 5, 20; Ex. 27 at Ex. 3.

[24] Ex. 29 at 2; Ex. 33.

[25] Ex. 29 at 2; Ex. 33.

[26] *Compare* Exs. 36, 39 at 1 *with* Ex. 27 at 1.

[27] *Compare* Exs. 36, 39 ¶¶ 1, 3 *with* Ex. 27 ¶¶ 1, 3.

- He removed discussion of his personal emails with the deputy city clerk and of additional drafts of the charter amendment he had filed.[28]
- In a paragraph discussing the First Amendment, Respondent added a sentence reading: "In this case, Defendant has the heavy burden to overcome the strict scrutiny test."[29]
- He added the following to a paragraph concerning the referendum power: "It is Defendant's burden to justify this impairment of constitutional rights."[30]
- He inserted a third cause of action for damages, which reads: "Plaintiff has been damaged by the willful actions of defendant described above and at a trial on the merits, personally, emotionally, and as a civil rights violation. The amount of damages will be shown at trial."[31]
- He excised some legalistic language; for instance, he substituted the word "says" for "affirms" in a sentence concerning the Municipal Home Rule Act, he removed a reference to "black letter law," and he deleted the words "supra" and "foregoing" in various places.[32]
- He deleted overwrought expressions, including characterizations of certain legal propositions as "CRYSTAL CLEAR" and of the City code as "lowly" and a reference to "OVERT MUNICIPAL CORRUPTION."[33]
- He improved some awkward phrasing; for example, he wrote that the court would "favor"—rather than "rule in favor" of—the City's "delay tactic" by scheduling a trial before issuing an injunction.[34]

At the hearing before the PDJ, Respondent characterized his role in altering the *Bruce II* complaint for use by Collins and Stinehagen as that of a "typist," dismissing the suggestion that he had "drafted" new complaints. Respondent did admit, however, that he did not transfer Collins's and Stinehagen's words verbatim into the complaints.

With respect to the added claim for damages, Respondent testified that Collins and Stinehagen conferred with him and asked if they could receive damages for deprivation of their constitutional rights. According to Respondent, he said they could not request damages after the judge reached a decision, so Collins and Stinehagen asked him to put appropriate language regarding damages into the complaint. Respondent testified that he typed up the claim for damages based on his friends' statements that they had been damaged, they had suffered distress, and their right to petition had been blocked. He argued that by using the term "willful" he was merely paraphras-

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[28] *Compare* Exs. 36, 39 ¶ 5 *with* Ex. 27 ¶ 5.
[29] *Compare* Exs. 36, 39 ¶ 16 *with* Ex. 27 ¶ 16.
[30] *Compare* Exs. 36, 39 ¶ 19 *with* Ex. 27 ¶ 19.
[31] *Compare* Exs. 36, 39 ¶ 23 *with* Ex. 27 at 13.
[32] *Compare* Exs. 36, 39 ¶¶ 3, 12, 15, 22 *with* Ex. 27 ¶¶ 3, 12, 15, 22.
[33] *Compare* Exs. 36, 39 ¶¶ 3, 5-6, 8 *with* Ex. 27 ¶¶ 5, 7-8, 10.
[34] *Compare* Exs. 36, 39 ¶ 14 *with* Ex. 27 ¶ 14.

ing Collins and Stinehagen's "laymen's" characterization of the City's actions as "intentional."

Both Collins and Stinehagen filed their complaints in El Paso County District Court on August 12, 2010.[35] Collins's complaint was assigned to Judge David Miller and Stinehagen's to Judge Ronald G. Crowder.

Judge Crowder held a status conference in the Stinehagen matter on August 20, 2010.[36] As the judge asked Stinehagen questions of a legal nature, such as whether he believed the title board had exceeded its jurisdiction, Respondent "whisper[ed] things to [Stinehagen] across the bar."[37] At one point during the colloquy, Stinehagen suggested that Judge Crowder permit Respondent to answer a timing-related question about the ballot measure, but the judge declined.[38] Judge Crowder explained that Stinehagen was the plaintiff, Respondent was not a lawyer, and while Respondent was welcome in the courtroom, he could not appear on Stinehagen's behalf.[39] Before the conclusion of the status conference, Judge Crowder asked Stinehagen who "wrote" the complaint, to which Stinehagen replied, "Mr. Bruce."[40]

Several days later, the City filed motions to dismiss the complaints and for consolidation.[41] Judge Miller consolidated the cases on August 25, 2010,[42] and held a motions hearing later that day, which Respondent, Collins, and Stinehagen attended.[43] At the motions hearing, Judge Miller noted right away that Respondent was "kind of hanging out in front of the rail, but not at counsel table" and asked about the capacity in which he was present.[44] Respondent replied that he was there "as an expert witness,"[45] noting he was not licensed to practice law in Colorado.[46]

Judge Miller then conversed at some length with Collins and Stinehagen about the doctrine of issue preclusion.[47] During this discussion, Collins and Stinehagen made several statements suggesting they had collectively strategized with Respondent to seek reconsideration of Judge Gilbert's ruling.

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[35] Ex. 36 (*Helen P. Collins v. City of Colorado Springs*, El Paso County District Court, case number 10CV343); Ex. 39 (*Douglas Stinehagen v. City of Colorado Springs*, El Paso County District Court, case number 10CV344).
[36] Ex. 44.
[37] *Id.* at 3-7.
[38] *Id.* at 6.
[39] *Id.* at 6-7.
[40] *Id.* at 17.
[41] Exs. 45, 47, 50-51.
[42] Exs. 57-58.
[43] Ex. 55 at 1 - 2; Ord. Granting Partial Summ. J. at 1-2.
[44] Ex. 55 at 3.
[45] *Id.*; Ord. Granting Partial Summ. J. at 2.
[46] Ex. 55 at 4.
[47] *Id.* at 6-13.

For instance, even though Stinehagen opined that the ruling was erroneous, he conceded he had not personally read it.[48] In prefacing one of his comments, Stinehagen began, "Your Honor, to sum this up, my complaint, or probably you could say *our* complaint . . . ."[49] In addition, Collins remarked that she had "*re*filed" the complaint because Judge Gilbert's ruling was unjustified.[50]

Soon thereafter, Collins asked permission to call Respondent as a "witness" to answer one of the judge's questions, explaining that she was not a legal expert but Respondent had attended law school.[51] Judge Miller refused the request, insisting that Collins represent herself.[52] He then asked her to explain how the cases differed from one another.[53] Respondent spoke up to answer the question, beginning, "One is on the Constitution . . . ."[54] Judge Miller interrupted, saying Respondent was "not to be commenting on the case, unless [he] want[ed] to practice law without a license."[55]

As the colloquy between the judge, Collins, and Stinehagen continued, Stinehagen expressed an opinion that *Bruce II* concerned the Constitution, while his and Collins's cases concerned them as "individual defendants."[56] Judge Miller then observed for the second time[57] that Respondent was writing a note to Stinehagen,[58] inferring that Respondent was "trying to tell [Stinehagen] what [he] need[ed] to say."[59] Judge Miller reviewed the note and marked it as a court exhibit.[60] The note stated: "Will one filing fee be refunded? Call me as expert witness on differences. The first is on the constitution on its face, this case is on both its face and as applied by defendant."[61]

Judge Miller remarked that he did not entirely understand the constitutional argument in the note, to which Respondent replied, "I'd be happy to explain what it means."[62] The judge again said Respondent could not speak for

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[48] *Id.* at 9-10.
[49] *Id.* at 9 (emphasis added). Further, Stinehagen again conceded that he did not draft the complaint himself. *Id.* at 6.
[50] *Id.* at 11 (emphasis added).
[51] *Id.* at 13-14; Ord. Granting Partial Summ. J. at 2.
[52] Ex. 55 at 14; Ord. Granting Partial Summ. J. at 2.
[53] Ex. 55 at 16.
[54] *Id.*
[55] *Id.*; Ord. Granting Partial Summ. J. at 2.
[56] Ex. 55 at 18-19.
[57] *See id.* at 16.
[58] *Id.* at 19; Ord. Granting Partial Summ. J. at 2.
[59] Ex. 55 at 19; Ord. Granting Partial Summ. J. at 2. Somewhat later in the proceeding, Collins also asked permission to speak after declaring that Respondent had handed her a note. Ex. 55 at 35.
[60] Ex. 55 at 19; Ex. 59; Ord. Granting Partial Summ. J. at 2.
[61] Ex. 59. Although the note is somewhat difficult to decipher, Respondent read its contents aloud at the disciplinary hearing after admitting he wrote it.
[62] Ex. 55 at 20.

the plaintiffs but noted that he could be joined as a party to the case if he wished.[63] Judge Miller then permitted Respondent to speak "as to the joinder of the case."[64]

Respondent seized the opportunity, explaining he wished to "speak . . . as a perceiving witness" rather than as an attorney.[65] He went on to criticize Judge Gilbert's ruling, allege judicial bias, explain why he had not appealed Judge Gilbert's decision, argue that a certain provision of the state constitution governed the charter amendment process, make facial and as-applied constitutional arguments, discuss the First Amendment right to petition, and assert that the doctrine of issue preclusion should not bar the complaints filed by Collins and Stinehagen.[66] Respondent ultimately declined to be joined as a party.[67]

Before concluding the hearing, Judge Miller ruled that the doctrine of issue preclusion barred Collins and Stinehagen's consolidated matter and that the doctrine of claim preclusion barred their claim for damages;[68] he also denied the City's request for attorney's fees.[69]

Unauthorized Practice of Law Claims

The People allege Respondent engaged in the unauthorized practice of law by (1) drafting Collins's and Stinehagen's complaints, (2) giving legal advice to Stinehagen by passing him a note suggesting legal arguments during the hearing before Judge Miller, and (3) making legal arguments on behalf of Collins and Stinehagen when Judge Miller permitted him to speak about joinder.

The Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,[70] restricts the practice of law to protect members of the public from receiving incompetent legal advice from

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[63] *Id.* at 20-21.
[64] *Id.* at 21.
[65] *Id.*
[66] *Id.* at 21-29.
[67] *Id.* at 28-29. Later on, Respondent made additional unsolicited comments regarding limitations he claimed the court of appeals had placed upon his representation of the Petitioners' Committee. *Id.* at 35-36. At the end of the hearing, Judge Miller offered Respondent a final opportunity to comment. *Id.* at 40. At that time, Respondent made several remarks concerning constitutional issues, issue preclusion, and four additional cases that were "in the pipeline." *Id.* at 40-43.
[68] *Id.* at 38.
[69] *Id.* at 39. The PDJ did not receive any evidence about subsequent efforts of Respondent or the Petitioners' Committee to place the charter amendment on the ballot.
[70] C.R.C.P. 228.

unqualified individuals.[71] 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."[72] 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 counselling, advising and assisting that person in connection with these rights and duties" engages in the unauthorized practice of law.[73]

With these overarching principles in mind, the PDJ turns to the People's first allegation: that Respondent practiced law by drafting Collins's and Stinehagen's complaints. Respondent counters that he merely permitted his friends to "copy" the *Bruce II* complaint—a publicly available document. He claims he acted as a "typist" when he altered details of his original complaint and that his additions, such as the third claim for damages, simply paraphrase Collins's and Stinehagen's own words.

Colorado case law holds that a layperson does not engage in the unauthorized practice of law merely by acting as a scrivener.[74] But the preparation of legal documents—particularly when coupled with advice about the content of those documents—crosses into the realm of the practice of law.[75] One hallmark of the unlawful preparation of legal documents for others is the

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[71] *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.").

[72] *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006); *see also* C.R.C.P. 201.3(2)(a)-(f) (defining the practice of law).

[73] *See 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.

[74] *Pub. Utils. Cmm'n*, 154 Colo. at 281, 391 P.2d at 472; *see also Grimes*, 759 P.2d at 4 (ordering a layperson who had been enjoined from the practice of law to "act solely and strictly as a scrivener" when asked by customers to fill in blank forms); *Franklin v. Chavis*, 640 S.E.2d 873, 876 (S.C. 2007) ("Even the preparation of standard forms that require no creative drafting may constitute the practice of law if one acts as more than a mere scrivener.").

[75] *Title Guaranty 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 Grimes*, 759 P.2d at 4 (ordering a layperson who had been enjoined from the practice of law not to "recommend or suggest to persons or entities using [his form service] what information should be placed in the blanks"); *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 411, 312 P.2d 998, 1004-05 (1957) (holding that preparation of legal documents, "coupled with the giving of explanation or advice as to the legal effect thereof, constitute[s] the practice of law").

exercise of "knowledge and skill beyond that possessed by the ordinarily experienced and intelligent lay[person]."[76]

Here, had Respondent merely substituted his friends' names for his own, he could colorably claim he had provided a typing service that required no particular legal skill. Similarly, simply revising awkward or inflammatory phrasing in a role akin to that of a copy editor likely would not have run afoul of these governing authorities. But Respondent did much more.

In particular, Respondent set forth arguments of a patently legal nature when he wrote, "In this case, Defendant has the heavy burden to overcome the strict scrutiny test,"[77] and "It is Defendant's burden to justify this impairment of constitutional rights."[78] By drafting these phrases, Respondent surely exercised "knowledge and skill beyond that possessed by the ordinarily experienced and intelligent lay[person]."[79] Comparatively few non-lawyers are familiar with the strict scrutiny test or the burdens attendant in proving or defending against certain legal claims. Indeed, the transcript of the proceeding before Judge Miller shows that Collins and Stinehagen relied on Respondent when the judge asked them about specific elements of their complaints, belying Respondent's contention that he simply paraphrased his friends' words when "typing" their complaints.

Respondent also drew upon his specialized legal training in drafting the third cause of action for damages. As noted above, that cause of action reads: "Plaintiff has been damaged by the willful actions of defendant described above and at a trial on the merits, personally, emotionally, and as a civil rights violation. The amount of damages will be shown at trial."[80] The word "willful" is a legal term of art, and its use in a complaint may substantially affect the nature and amount of damages available to a plaintiff.[81] Thus, Respondent not only advised Collins and Stinehagen that they were required to claim damages

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[76] *Pub. Utils. Cmm'n*, 154 Colo. at 280, 391 P.2d at 471-72 (stating also that the practice of law encompasses the preparation for others of "documents requiring familiarity with legal principles beyond the ken of the ordinary layman" and "procedural papers requiring legal knowledge and technique"); *see also Grimes*, 759 P.2d at 3-4 (ordering a layperson who had been enjoined from the practice of law to refrain from "prepar[ing] any document for any other person or entity which would require familiarity with legal principles").

[77] *Compare* Exs. 36, 39 ¶ 16 *with* Ex. 27 ¶ 16.

[78] *Compare* Exs. 36, 39 ¶ 19 *with* Ex. 27 ¶ 19.

[79] *See Pub. Utils. Cmm'n*, 154 Colo. at 280, 391 P.2d at 472.

[80] Ex. 36 ¶ 23.

[81] *See, e.g.*, C.R.S. § 13-21-102(1)(a) (authorizing the award of exemplary (i.e., punitive) damages in civil actions, as a supplement to actual damages, when a person has been wronged by willful and wanton conduct).

in their complaints but also drafted a cause of action with technical legal terminology that could have affected their legal rights.[82]

The PDJ concludes Respondent acted as far more than a scrivener for Collins and Stinehagen.[83] Instead, Respondent prepared complaints for them, using his legal training and skill, in violation of the unauthorized practice of law rules. But he exercised questionable judgment by drafting duplicative complaints that exposed Collins and Stinehagen to the risk of facing sanctions, attorney's fees, and costs. Respondent's actions thus implicate the fundamental concerns underlying the unauthorized practice of law rules—that unlicensed persons will provide flawed and harmful legal advice to unsuspecting members of the public.

The People next contend that Respondent engaged in the unauthorized practice of law by counseling Stinehagen during the proceeding before Judge Miller. As recounted above, Respondent passed Stinehagen a note during the hearing that read: "Will one filing fee be refunded? Call me as expert witness on differences. The first is on the constitution on its face, this case is on both its face and as applied by defendant."[84] Respondent objected to Judge Miller's decision to review the note and to introduce it into evidence during that proceeding, claiming the note was a "private communication." He testified that he simply wanted to help his friends navigate this proceeding without incurring unfair fees. He also explained to the PDJ that his notation regarding the Constitution was meant to instruct Stinehagen that his complaint was not barred by Judge Gilbert's and Judge Cisneros's rulings.

The PDJ agrees with the People that Respondent provided legal advice by giving Stinehagen this note. Legal knowledge and skill are required to articulate the concepts in the note, particularly the distinction between facial and as-applied constitutional challenges.[85] Moreover, a recommendation as to

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[82] *See Pub. Utils. Cmm'n*, 154 Colo. at 279, 391 P.2d at 471 (stating that an unlicensed person engages in the unauthorized practice of law by advising another in connection with their legal rights).

[83] *See In re Conduct of Devers*, 974 P.2d 191, 196 (Or. 1999) (concluding that the act of revising and redrafting a settlement agreement for another person—including inserting wording regarding a claim against a third party—"is the work of a lawyer, not a scrivener").

[84] Ex. 59.

[85] A facial challenge to a law requires a plaintiff to prove beyond a reasonable doubt that it is impossible to apply the law in a constitutional manner. *Qwest Servs. Corp. v. Blood*, 252 P.3d 1071, 1083 (Colo. 2011). In an as-applied challenge, by contrast, the plaintiff must establish that the law is unconstitutional under the circumstances in which he or she acted or intends to act. *Id.* at 1085 (quotation and citation omitted). Standards governing ripeness and standing differ for facial and as-applied challenges, and determining which type of challenge is appropriate under a given set of circumstances requires legal analysis. *See, e.g., Developmental Pathways v. Ritter*, 178 P.3d 524, 534 (Colo. 2008) (determining that plaintiffs had incorrectly sought relief through an as-applied constitutional challenge, when a facial challenge was the only proper avenue for seeking relief); *People v. Shepard*, 983 P.2d 1, 3

how to introduce evidence or legal argument in a judicial proceeding falls squarely within the bounds of the practice of law.[86] Here, Respondent issued such a recommendation when he instructed Stinehagen to call him as an expert witness regarding the differences between the complaints at issue.

Respondent's arguments regarding the particular factual circumstances underlying his actions do not alter the PDJ's conclusion. One such argument Respondent makes is that he cannot have unlawfully practiced law by merely helping his friends. But a personal relationship between a giver and a recipient of legal advice does not provide license to offer such advice.[87] Similarly, Respondent's suggestion that free advice is not proscribed by the unauthorized practice of law rule lacks legal support, as the "charging and receiving of a fee is unnecessary to constitute the practice of law."[88] Neither is it relevant, as Respondent argues, that he did not sign Collins's or Stinehagen's pleadings, enter an appearance in court, or wear a suit in court.[89] Finally, that Respondent told his friends he was not a licensed attorney does not vitiate the People's unauthorized practice of law claim.[90]

The People's third allegation—that Respondent engaged in the practice of law when he made oral legal argument to Judge Miller—is less persuasive. To be sure, presenting legal theories to a court on behalf of another person

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n.3 (Colo. 1999) (noting that standing requirements for raising facial claims differ in cases concerning fundamental rights and those concerning non-fundamental rights).

[86] *See Shell*, 148 P.3d at 174 (stating that the unauthorized practice of law encompasses "offering advice or judgment about legal matters to another person for use in a specific legal setting").

[87] *See Conway-Bogue*, 135 Colo. at 412, 312 P.2d at 1005 (overruling *People ex rel. Attorney Gen. v. Jersin*, 101 Colo. 406, 407-13, 74 P.2d 668, 668-71 (1937), in which the court held that a layperson did not practice law when he acquiesced to the request of an ill and intimate friend that he prepare three deeds and a will); *In re Chavez*, 1 P.3d 417, 424 (N.M. 2000) (stating that "[o]ne is not authorized to undertake legal representation in any [ ] capacity [other than pro se representation or appearing through licensed counsel of record], regardless of whether one calls oneself a legal assistant, an intermediary, a scrivener, or just a friend").

[88] *Baker*, 85 A.2d at 514; *see also People ex rel. Attorney Gen. v. Woodall*, 128 Colo. 563, 563-64, 265 P.2d 232, 233 (1954) (holding that the preparation of a will without charge amounted to the practice of law); *Housing Auth. of City of Charleston v. Key*, 572 S.E.2d 284, 285 (S.C. 2002) (finding it "irrelevant" to an unauthorized practice of law claim that the respondent had accepted no fee).

[89] *See Chavez*, 1 P.3d at 424 (noting that the definition of the practice of law is not "limited to signing pleadings or appearing in court on another's behalf").

[90] *Woodall*, 128 Colo. at 563-64, 265 P.2d at 233 (holding that a bank cashier engaged in the practice of law when he prepared a will for a member of the public, even though he never represented that he was a lawyer or that he had legal training); *Columbus Bar Ass'n v. Am. Family Prepaid Legal Corp.*, 916 N.E.2d 784, 797 (Ohio 2009) (deciding that disclosure of non-attorney status is no defense to an unauthorized practice of law claim); *Fl. Bar v. Brumbaugh*, 355 So.2d 1186, 1193-94 (Fla. 1978) (holding that even though a respondent never held herself out as an attorney, her clients placed some reliance on her to properly represent their interests, and she therefore engaged in the unauthorized practice of law).

normally falls within the definition of the practice of law.[91] But in this case, Respondent perorated at the invitation of Judge Miller, who specifically offered him the opportunity to speak "as to the joinder of the case."[92] Respondent's wide-ranging comments arguably exceeded the scope of Judge Miller's invitation, but it is difficult to fault Respondent for responding expansively to the judge's inquiries. He could have fairly assumed Judge Miller would direct him to stop speaking when his commentary ceased to be useful or relevant. Under these circumstances, the PDJ does not find that Respondent engaged in the unauthorized practice of law by presenting oral argument to Judge Miller.

First Amendment Defenses

In addition to arguing that his actions did not equate to the practice of law, Respondent sets forth three affirmative defenses under the First Amendment: that his activities were protected by the guarantees of freedom of speech and the right to petition[93] and that the ban on the unauthorized practice of law is unconstitutionally vague.

The PDJ begins by examining Respondent's freedom of speech defense. The Supreme Court has determined that, "[i]n general, Colorado's ban on the unauthorized practice of law does not implicate the First Amendment because it is directed at *conduct*, not *speech*."[94] That a course of conduct is carried out in part through writing or speaking does not mean such conduct must be permitted, and the fact that the ban touches on the content of legal advice offered is of no constitutional moment.[95] Therefore, as the Supreme Court held in *Shell*, an unlicensed person's practice of law can be sanctioned without offending the First Amendment right to free speech.[96]

The PDJ recognizes that political activity occupies a privileged position in First Amendment jurisprudence. For instance, as the People note, some First

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[91] *See, e.g., Encinas v. Mangum*, 54 P.3d 826, 827 (Ariz. App. 2002) (ruling that a trial court had erred by permitting a non-lawyer to "ask questions and make arguments in court on behalf of" the non-lawyer's mother because those activities amount to the practice of law).

[92] Ex. 55 at 21.

[93] U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech, . . . or the right of the people . . . to petition the Government for a redress of grievances."); *see United Mine Workers of Am. v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 n.4 (1967) ("The freedoms protected against federal encroachment by the First Amendment are entitled under the Fourteenth Amendment to the same protection from infringement by the States."); COLO. CONST. Art. 2, § 10 ("No law shall be passed impairing the freedom of speech . . . ."); COLO. CONST. Art. 2, § 24 ("The people have the right . . . to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.").

[94] *Shell*, 148 P.3d at 173 (citing *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978)); *see also Fl. Bar v. Smania*, 701 So.2d 835, 836 n.2 (Fla. 1997) (holding that for non-lawyers, the activities of appearing in court on behalf of others (except as a witness), drafting pleadings for others, and giving legal advice "do not constitute protected speech").

[95] *Shell*, 148 P.3d at 173.

[96] *Id.* at 174.

Amendment case law can be interpreted as providing special protections for litigation assistance directed toward bringing about political or social change or protecting civil rights.[97] But these judicial decisions do not shield Respondent's actions because they support only the proposition that non-lawyers may assist litigants by providing or facilitating access to *licensed attorneys*, not the proposition that non-lawyers may themselves furnish legal advice.[98] Here, Respondent personally provided legal assistance to others despite his lack of a law license, rather than helping others to secure a lawyer's services. Thus, Respondent's actions—like the politically motivated actions of the respondent in *Shell*, who was an "advocate committed to exposing what she consider[ed] to be abuses of process that occur in Colorado dependency and neglect cases"[99]—are subject to injunction and sanctions notwithstanding their political character.

Turning to the right to petition, citizens' access to the courts is without doubt a fundamental guarantee under the First Amendment.[100] But "the right to petition is *personal* and does not extend to petitioning activity on behalf of others."[101] As such, the First Amendment right to file a lawsuit does not preclude the Supreme Court from limiting legal representation to licensed attorneys.[102] Accordingly, the PDJ finds no support for Respondent's claim that the ban on the unauthorized practice of law abridges his First Amendment right to petition.

The People have set forth an additional, more elaborate theory as to why Respondent's actions are not covered by the First Amendment. The People point to the "sham exception" test, which applies to claims alleging that prior lawsuits amounted to an abuse of process or to tortious interference with

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[97] *See, e.g., NAACP v. Button*, 371 U.S. 415, 439 (1962); *Frye v. Tenderloin Housing Clinic, Inc.*, 129 P.3d 408, 416-19 (Cal. 2006). *But see United Mine Workers*, 389 U.S. at 223 (indicating that the *Button* holding is not restricted to "political matters of acute social moment" but rather extends to broader rights of groups to provide legal services for their members).

[98] *Button*, 371 U.S. at 439; *Frye*, 129 P.3d at 416-19.

[99] 148 P.3d at 167.

[100] *In re Foster*, 253 P.3d 1244, 1251 (Colo. 2011).

[101] *Id.* at 1252.

[102] *Id.* (holding that "the First Amendment right to petition does not permit unlicensed individuals to represent others in legal matters"); *Shell*, 148 P.3d at 174 (ruling that "the First Amendment right to file a lawsuit does not extend to filing a lawsuit on behalf of another, nor does it prohibit the state from restricting legal representation to licensed attorneys"); *see also Neilson v. State of Mich.*, 181 F.3d 102 (Table), at *1 (6th Cir. 1999) (holding that a judge's decision to preclude a layperson from representing defendants did not implicate their First or Fourteenth Amendment rights); *Turner v. Am. Bar Ass'n*, 407 F. Supp. 451, 478 (D. Ala. 1975) (deciding that the First Amendment rights to petition and to freedom of association do not encompass the right to hire a non-lawyer representative in judicial proceedings, nor the right of a non-lawyer to represent others); *State ex rel. Baker v. Cnty. Court*, 138 N.W.2d 162, 168 (Wis. 1965) (holding that barring an unlicensed person from petitioning on behalf of others does not abridge the right to petition).

business expectancies.[103] Under that test, the People argue the right to petition does not apply here because (1) Respondent advised Collins and Stinehagen to engage in litigation that was barred by the doctrine of issue preclusion and was thus objectively baseless, and (2) Respondent was motivated by the improper goal of "multiplying the same litigation."

The PDJ finds it unnecessary to engage in this complex inquiry. The First Amendment protects only personal petitioning activity, not the provision of legal advice to others.[104] Given the Supreme Court's determination that the right to petition is simply not implicated by the unauthorized practice of law rule, it is irrelevant whether the sham exception might also exclude Respondent's actions from the scope of First Amendment protection.

In rejecting Respondent's free-speech and petitioning defenses, the PDJ hastens to add that the ban on the unauthorized practice of law is "focus[ed] on case-specific legal practice," so it does not restrict the "right to criticize legal rulings or advocate for the reform of Colorado's legal system."[105] Throughout these proceedings, Respondent has expressed fears that the unauthorized practice of law rule could be applied so as to bar members of the public from distributing copies of the Constitution, declaring the Constitution is the supreme law of the land, expressing personal opposition to judicial rulings like the *Roe v. Wade* decision, testifying in court as a witness, or encouraging someone to challenge a traffic ticket. The unauthorized practice of law rule, however, cannot bar legitimate First Amendment activities such as expressing personal opinions, repeating lessons taught in high school civics classes, or urging someone to exercise a legal right.[106] As Justice Jackson commented over a half-century ago,

> A state may forbid one without its license to practice law as a vocation, but I think it could not stop an unlicensed person from making a speech about the rights of man or the rights of labor, or any other kind of right, including recommending that his hearers organize to support his views.[107]

Respondent's final First Amendment defense is that Colorado's ban on the unauthorized practice of law is void for vagueness. He points to the Supreme Court's oft-repeated comment that "[t]here is no wholly satisfactory

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[103] *See Krystkowiak v. W.O. Brisben Cos.*, 90 P.3d 859, 865 (Colo. 2004); *Protect Our Mountain Env't, Inc. v. Dist. Court*, 677 P.2d 1361, 1366-67 (Colo. 1984).
[104] *Foster*, 253 P.3d at 1252; *Shell*, 148 P.3d at 174.
[105] *Shell*, 148 P.3d at 174.
[106] *See Foster*, 253 P.3d at 1250 (noting that "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights") (quoting *Button*, 371 U.S. at 439). Nor does the unauthorized practice of law rule bar a person from serving as a witness in a judicial proceeding. *See Fl. Bar*, 701 So.2d at 836 n.2.
[107] *Thomas v. Collins*, 323 U.S. 516, 544 (1945) (Jackson, J., concurring).

definition as to what constitutes the practice of law [and] it is not easy to give an all-inclusive definition,"[108] and he suggests that the lack of a clear definition means the unauthorized practice of law rule is unconstitutionally vague.

The burden is on Respondent to establish his claim of unconstitutional vagueness beyond a reasonable doubt.[109] For a law to be facially void for vagueness, it must be "incomprehensible in all of its applications."[110] Although there may not be a clear demarcation between the exercise of free speech and the practice of law,[111] the activities outlined in C.R.C.P. 201.3(2)(b) and controlling case law are "specific enough to provide a person of common intelligence with notice of what activities constitute the practice of law."[112] As such, in *Shell*, the respondent's facial claim of vagueness lacked merit.[113] So too here.

To prevail on an as-applied challenge for vagueness, Respondent must show that the unauthorized practice of law rule "does not, with sufficient clarity, prohibit the conduct against which it is enforced."[114] In this matter, the PDJ recommends that the Supreme Court enforce the unauthorized practice of law rule against Respondent's drafting of complaints and provision of legal advice. As noted in *Shell*, "C.R.C.P. 201.3(2)(b) unambiguously defines the practice of law to include 'drafting documents and pleadings[ ]' [and] 'giving advice with respect to the law."[115] In light of this authority, Respondent cannot show that the rules barring his conduct were drafted with insufficient clarity. Accordingly, the ban on the unauthorized practice of law is not unconstitutionally vague as applied to Respondent.[116]

Jury Trial, Jurisdiction, Venue, and Change of Judge

Respondent argues he is constitutionally entitled to a jury trial in this matter because the proceeding is quasi-criminal in nature.[117] The United States and Colorado constitutions both guarantee defendants the right to a

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[108] *Pub. Util. Comm'n*, 154 Colo. at 279, 391 P.2d at 471.
[109] *People v. Baer*, 973 P.2d 1225, 1230 (Colo. 1999).
[110] *Shell*, 148 P.3d at 172 (citing *People ex rel. City of Arvada v. Nissen*, 650 P.2d 547, 550 (Colo. 1982)).
[111] *Id.* at 173.
[112] *Id.*
[113] *Id.*; *see also Lawline v. Am. Bar Ass'n*, 956 F.2d 1378, 1386 (7th Cir. 1992) (affirming facial validity of rules prohibiting the unauthorized practice of law).
[114] *Shell*, 148 P.3d at 173 (quotation omitted).
[115] *Id.* at 172.
[116] In light of this conclusion, the PDJ also rejects the argument Respondent made in passing that "gray areas" in the definition of the unauthorized practice of law are being "filled in" at his expense in violation of the Ex Post Facto clause. *See* U.S. CONST. art. I, § 10, cl. 1; COLO. CONST. art. II, § 11.
[117] Although Respondent requested a jury trial in the answer he filed with the Supreme Court, he did not file a demand for a jury trial accompanied by a jury fee. As such, he waived any right he might have claimed to a trial by jury. C.R.C.P. 38(e).

speedy and public trial by jury in criminal proceedings.[118] C.R.C.P. 234, 235, and 236, however, specifically denominate this matter as a "*civil* injunction proceeding."[119] Indeed, even contempt proceedings filed in unauthorized practice of law cases do not necessarily trigger the right to a jury trial. The *Shell* decision noted that, under federal and state case law, a jury trial is not a matter of right in "non-serious or petty offenses."[120] The seriousness of a charge is to be judged by "objective indications of the seriousness with which society regards the offense."[121] In the absence of such indications, "seriousness" may be assessed by looking to the severity of the fine that may be imposed.[122] In *Shell*, the Supreme Court determined that the hearing master's recommendation of a $6,000.00 fine for contempt did not trigger the respondent's constitutional right to a jury trial.[123]

Under C.R.C.P. 236(a), a hearing master is required to recommend a fine of $250.00 to $1,000.00 for each instance of the unauthorized practice of law. Here, the People allege Respondent engaged in two instances of the unauthorized practice of law by providing legal advice to both Collins and Stinehagen. As such, Respondent faces no more than a $2,000.00 fine in this proceeding—a significantly smaller fine than that imposed in *Shell*. Therefore, the PDJ cannot find that Respondent would have been entitled to a jury trial even had he requested one under C.R.C.P. 38.

Next, Respondent argued in passing that jurisdiction is absent because the Office of *Attorney* Regulation Counsel litigated this matter, yet Respondent is not a registered attorney.[124] The PDJ finds no validity in this unsupported assertion. Exclusive authority to regulate the unauthorized practice of law is vested in the Supreme Court.[125] Pursuant to that authority, the Supreme Court has empowered the People to investigate, prepare, and prosecute allegations regarding the unauthorized practice of law, including by representing the State of Colorado in civil injunction proceedings before a hearing master.[126] This proceeding was properly commenced before the Supreme Court pursuant to C.R.C.P. 234, and the Supreme Court then

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[118] U.S. CONST. amend. VI; COLO. CONST. art. II, § 16.
[119] (Emphasis added).
[120] *Shell*, 148 P.3d at 176 (citing *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968) and *Austin v. City & Cnty. of Denver*, 170 Colo. 448, 456, 462 P.2d 600, 604 (1969) (quotation omitted)).
[121] *Id.* (quoting *Lewis v. United States*, 518 U.S. 322, 325 (1996)).
[122] *Id.* at 177.
[123] *Id.*; *see also Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 147 P.3d 200, 211 (Mont. 2006) (holding that a request for an injunction and for a finding of civil contempt for engaging in the unauthorized practice of law did not give rise to the right to a jury trial).
[124] It is not entirely clear whether Respondent meant that the People lack jurisdiction or that the PDJ lacks jurisdiction, so the PDJ addresses both arguments.
[125] C.R.C.P. 228.
[126] C.R.C.P. 231, 232.5, 235.

referred the matter to the PDJ, as hearing master, pursuant to C.R.C.P. 234. As such, the PDJ concludes jurisdiction is proper in this proceeding.

Also without citing supporting legal authority, Respondent asserted at the hearing that venue for this case lies in El Paso County, where the underlying events occurred.[127] C.R.C.P. 235(a) provides that "[c]ivil injunction proceedings before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants." Thus, venue for unauthorized practice of law proceedings does not, as Respondent suggests, depend on where the incidents at issue took place. Given that the PDJ's courtroom and staff are located in Denver,[128] which is just seventy-five miles from Respondent's home of Colorado Springs, the PDJ cannot find that venue is improper in Denver.[129]

Finally, Respondent argues in his answer that "[h]aving a hearing officer or other person chosen and paid for [by] the state that is instituting these proceedings is an obvious bias and conflict of interest."[130] He therefore requests a judge to be appointed by the governor under article VI of the Colorado Constitution.[131] The PDJ cannot divine which section of article VI Respondent relies upon or the grounds for Respondent's belief that a judge appointed by the governor would lack the supposed bias of a judge appointed by the Supreme Court. Regardless, the PDJ finds no basis for a change of hearing master in this matter. C.R.C.P. 97 requires any motion to disqualify a judge to be supported by affidavit. Respondent has filed no affidavit supporting his request for a change of hearing master. In addition, Respondent's argument appears to rest upon a general distrust of the codified procedures governing unauthorized practice of law matters rather than a belief that the PDJ, in particular, is prejudiced in this matter. Accordingly, the PDJ finds that Respondent's request for a change in hearing master lacks merit.

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 Supreme Court impose a fine ranging from $250.00 to $1,000.00 for each incident of the unauthorized practice of law. The People argue Respondent

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[127] Respondent did not file a proper motion to change venue, and he therefore waived any right he might have claimed to have venue changed. C.R.C.P. 98(e)(1).

[128] *See* C.R.C.P. 251.16(c)(1) (instructing the PDJ to establish his office in the Denver metropolitan area).

[129] To accommodate Respondent's concerns about travel time and expenses, the PDJ permitted Respondent to appear by telephone at all pre-hearing proceedings.

[130] Answer at 3.

[131] *Id.*

engaged in the unauthorized practice of law in two instances by assisting Collins and assisting Stinehagen. The PDJ finds this position reasonable.[132]

In assessing fines for the unauthorized practice of law, the Supreme Court previously has examined whether the respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.[133] Here, the PDJ considers in mitigation that Respondent's unauthorized activities took place over a limited timeframe and that he has not been enjoined from the practice of law. Yet the PDJ also finds Respondent lacked a good faith basis for engaging in the activities at issue here; his legal training and experience should have alerted him to the risks and impropriety of his conduct. As such, the PDJ recommends that the Supreme Court impose moderate fines of $500.00 each for Respondent's two instances of the unauthorized practice of law.

Next, the People have not requested restitution in this matter, nor does it appear that restitution would be appropriate here.

Turning to the issue of costs, the People filed a statement of costs on April 3, 2012, reflecting $3023.86 in expenses, primarily for service of process and for Respondent's deposition.[134] Respondent filed a response to the People's statement of costs eight days later, contesting the expenses charged and requesting a hearing on the issue of costs or an extension of time to more fully specify his objections. His objections include assertions that the transcript and surveillance costs are unreasonable, that the People attempted to serve witnesses who were unnecessary to the case, that the People did not need to depose him, and that a duplicate charge appears for a FedEx package sent to Judge Miller.

At the PDJ's direction, the People filed a reply in support of their statement of costs on April 19, 2012. In their reply, they do not take a position on Respondent's request for a hearing on the issue of costs. The People concede that their statement of costs reflected a duplicate FedEx charge and that it is appropriate to deduct that charge of $4.80. Otherwise, however, the People argue that their expenses were necessary to the preparation of their case.

On April 30, 2012, the People filed an amended statement of costs. The amended statement reflects an addition of $79.00 for a witness's mileage and parking costs. In light of this addition and the $4.80 reduction agreed to in their reply, the People seek costs in the amount of $3098.06.

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[132] *See People v. Adams*, 243 P.3d 256, 267 & n.7 (Colo. 2010) (holding that a respondent who provided legal services to five separate individuals engaged in five instances of the unauthorized practice of law for purposes of C.R.C.P. 236).

[133] *Id.* at 267-68.

[134] The attachments to the statement of costs indicate that the People's process servers made multiple attempts to serve Respondent and fellow members of the Petitioners' Committee.

The PDJ issued an order on April 30, 2012, directing the People to set a hearing on the issue of costs and requesting that each party file a legal memorandum regarding the applicable legal standards. The People filed their memorandum on May 9, 2012, and a hearing brief on May 17, 2012. Respondent did not file any documents with the PDJ in advance of the hearing.

The PDJ conducted a hearing regarding the People's statement of costs on May 22, 2012. Mr. Ikeler appeared for the People and Respondent appeared pro se by telephone. Respondent, who was serving a sentence in jail, asked the PDJ to continue the hearing until after his release from custody the following month. Respondent claimed he was unable to meaningfully participate in the hearing from jail because he had been unable to conduct legal or other research, he was not permitted to access his files during his telephone appearance, and he would be unable to view the demeanor of the witness whom the People planned to call. The PDJ granted Respondent's request and continued the hearing on costs to June 29, 2012.

During the hearing on June 29, 2012, Mr. Ikeler and Respondent both appeared. The People called as a witness Elaine Javernick, whose court reporting firm prepared the transcript of Respondent's deposition at a cost of $1015.25.[135] She testified that the People had asked her firm to prepare the transcript on an expedited basis by January 9, 2012—two business days after the deposition and fourteen business days before the trial. Ms. Javernick testified that her company's fees are fair and within a standard range for the Denver metropolitan area.[136] She also stated that the request for expedited preparation of the transcript within two business days, instead of within the regular ten-business-day turnaround period, increased the per-page cost of the transcription from $3.75 to $6.75.

In his legal memorandum filed in advance of the hearing and at the hearing itself, Respondent objected in general to paying costs of this proceeding. In particular, he argued that he should not have to pay the extra charges that the People incurred for the expedited transcription of his deposition. Respondent also argued that the PDJ lacks jurisdiction to award costs in this matter.

In unauthorized practice of law matters, the Supreme Court may assess costs as it deems appropriate, pursuant to C.R.C.P. 237(a). Given that the Supreme Court has directed the PDJ to prepare a report setting forth "findings of fact, conclusions of law, and recommendations," the PDJ deems it appropriate to issue recommendations to the Supreme Court on the issue of

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[135] The PDJ admitted into evidence the People's exhibits 1-17. The People's invoice for Respondent's deposition transcript appears on page 0021 of exhibit 16.

[136] Respondent stipulated that Ms. Javernick is an expert in the field of court reporting.

costs. Because the unauthorized practice of law rules do not otherwise speak to the awarding of costs, the Colorado Rules of Civil Procedure apply to this issue.[137] C.R.C.P. 54(d), in turn, provides that "costs shall be allowed as of course to the prevailing party."[138] In civil matters, the Supreme Court has held that it is appropriate to award "the expenses incurred in taking discovery depositions . . . where the taking of the deposition and its general content were reasonably necessary for the development of the case in light of facts known to counsel at the time it was taken."[139]

Here, the People are the prevailing party, and the PDJ finds that most of their requested costs are reasonable. For instance, the People's statement of costs includes FedEx charges for sending materials to witnesses, which constitute witness-related fees;[140] a court reporter appearance fee, which is a standard charge necessary to comply with the requirement of taking a "complete record" of proceedings;[141] and service of process fees, which are generally deemed to be properly assessable costs.[142] In addition, the PDJ finds that it was reasonably necessary for the People to take Respondent's deposition to prepare for trial. However, it is less clear that Respondent should bear the fees for expediting delivery of that transcript. Although Respondent's own actions contributed in part to the delay in his deposition, the People could have obviated the need for an expedited transcript by scheduling the deposition even earlier, or they could have chosen to receive the transcript within the regular ten-business-day timeframe, which would have been several days before trial. Accordingly, the PDJ determines that it is appropriate to award to the People all of their requested costs, except for the charges attributable to the People's decision to expedite preparation of the deposition transcript, which, at an additional cost of $3.00 per page for 127 pages, amounts to $381.00. The PDJ therefore recommends that the Supreme Court assess $2717.06 in costs against Respondent.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Supreme Court **FIND** Respondent engaged in the unauthorized practice of law and **ENJOIN** him from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the

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[137] C.R.C.P. 235(d).

[138] *See also* C.R.S. § 13-16-122 (setting forth an illustrative list of categories of "includable" costs in civil cases, including "[a]ny fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case," "witness fees," "[a]ny costs of taking depositions for the perpetuation of testimony," and "[a]ny fees for service of process").

[139] *Cherry Creek Sch. Dist. No. 5 v. Voelker by Voelker*, 859 P.2d 805, 813 (Colo. 1993).

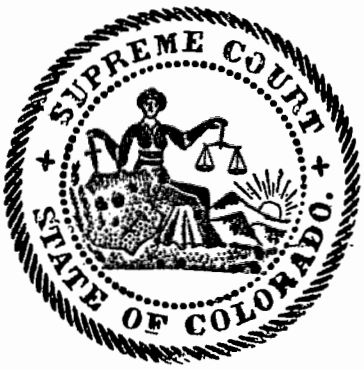
[140] *See Valentine v. Mountain States Mut. Cas. Co.*, 252 P.3d 1182, 1188 (Colo. App. 2011) (stating that "[a] prevailing party may recover its reasonable and necessarily incurred witness costs" and that "[s]uch costs may include those associated with witnesses who do not testify at trial").

[141] C.R.C.P. 235(d).

[142] *See* C.R.S. § 13-16-122; *Valentine*, 252 P.2d at 1188.

Supreme Court enter an order requiring Respondent to pay a **FINE** of $1000.00 and to pay **COSTS** in the amount of $2717.06.

DATED THIS 6th DAY OF JULY, 2012.



William R. Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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