

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 6, 2017 CASE NUMBER: 2016SA54
Original Proceeding in Unauthorized Practice of Law, 15UPL053	
<b>Petitioner:</b>  The People of the State of Colorado,  <b>v.</b>  <b>Respondent:</b>  Dena Mill d/b/a Mill Consulting.	Supreme Court Case No: 2016SA54
ORDER OF COURT	

Upon consideration of the Order Entering Default Judgment Under C.R.C.P. 55(b) and Report of Hearing Master Under C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that Respondent, DENA MILL d/b/a MILL CONSULTING shall be, and the same hereby is, ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado.

IT IS FURTHER ORDERED that Respondent, DENA MILL d/b/a MILL CONSULTING is assessed costs in the amount of \$244.40. 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 Respondent, DENA MILL d/b/a MILL CONSULTING pay a fine of \$1,500.00.

IT IS FURTHER ORDERED that Restitution be imposed in the amount of 4,500.00.

BY THE COURT, JANUARY 6, 2017.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p><b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b> DENA MILL, d/b/a MILL CONSULTING</p>	<p>Case Number: <b>16SA054</b></p>
<p><b>ORDER ENTERING DEFAULT JUDGMENT UNDER C.R.C.P. 55(b) AND REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)</b></p>	

Before the Presiding Disciplinary Judge (“the PDJ”) is a “Motion for Entry of Default Judgment” filed on October 3, 2016, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Dena Mill, d/b/a Mill Consulting (“Respondent”), did not file a response.

### **I. PROCEDURAL HISTORY**

The People filed a “Petition for Injunction” with the Colorado Supreme Court on February 12, 2016, alleging that Respondent engaged in the unauthorized practice of law. On February 25, 2016, the Colorado Supreme Court issued an order directing Respondent to answer in writing and to show cause why she should not be enjoined from the unauthorized practice of law. The People personally served Respondent with the petition and order on June 10, 2016, but Respondent did not respond to the petition or the show cause order.

On July 20, 2016, the Colorado Supreme Court referred this matter to the PDJ to prepare a report. The PDJ entered an order on July 29, 2016, directing Respondent to answer the People’s petition no later than August 12, 2016. Respondent did not comply with that order. The PDJ thus entered default against Respondent on September 8, 2016, deeming the allegations in the People’s petition admitted.

### **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; 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; submitting an affidavit from Jill A. Cutler, who attests to the amount of money Respondent collected from her for purported legal services, thereby establishing the amount of restitution she is due; and filing a statement of costs. Accordingly, the PDJ **GRANTS** “Petitioner’s Motion for Entry of 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. 236(a). The following facts were established by the entry of default.

#### Factual Findings

Respondent is a Colorado resident, with a last-known address of 739 Windflower Drive, Longmont, Colorado 80504.<sup>1</sup> Respondent attended the University of Denver and the University of Iowa.<sup>2</sup> She is not licensed to practice law in Colorado or any other state,<sup>3</sup> though she claims to have a Juris Doctor degree.<sup>4</sup> Respondent does business as Mill Consulting.<sup>5</sup>

Jill Cutler was a plaintiff in a replevin action captioned *Jill A. Cutler v. Clarissa Edelen and Fabulous Finds Upscale Consignment, LLC*, in Boulder County District Court case number 2014CV093 (the “replevin case”).<sup>6</sup> Cutler was also a plaintiff in a breach of contract case captioned *Jill A. Cutler v. Clarissa Edelen, Fabulous Finds Upscale Consignment, a Colorado general partnership, and Fabulous Finds Upscale Consignment, LLC, a Colorado limited liability company*, in Boulder County District Court case number 2014CV31104 (the “breach of contract case”).<sup>7</sup> Finally, Cutler was a defendant in an action for money damages captioned *Berkley I. Freeman, Jr. v. Jill A. Cutler and Fabulous Furnishings, LLC*, in Boulder County District Court case number 2014CV32261 (the “money damages case”).<sup>8</sup>

Respondent and Cutler signed a “Mill Consulting Fee Agreement” on April 26, 2014.<sup>9</sup> The scope of the fee agreement covered Cutler’s “personal and business matters.”<sup>10</sup> Respondent acted as Cutler’s legal advisor on three cases, as described below, throughout 2014.<sup>11</sup> Cutler followed Respondent’s legal advice.<sup>12</sup>

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<sup>1</sup> Pet. ¶ 1.

<sup>2</sup> Pet. ¶ 8.

<sup>3</sup> Pet. ¶ 2.

<sup>4</sup> Pet. ¶ 9.

<sup>5</sup> Pet. ¶ 3.

<sup>6</sup> Pet. ¶ 5.

<sup>7</sup> Pet. ¶ 6.

<sup>8</sup> Pet. ¶ 7.

<sup>9</sup> Pet. ¶ 11.

<sup>10</sup> Pet. ¶ 12.

<sup>11</sup> Pet. ¶ 38.

<sup>12</sup> Pet. ¶ 39.

In May 2014, Respondent drafted a “Complaint in Replevin” for Cutler to file with the court.<sup>13</sup> Cutler signed the complaint, which was filed May 5, 2014.<sup>14</sup> The court then set a hearing, for which Cutler met with Respondent to prepare.<sup>15</sup> Respondent also attended the hearing with Cutler.<sup>16</sup> The court dismissed the complaint.<sup>17</sup> Respondent later drafted two motions for an extension of time to seek post-trial relief.<sup>18</sup> Cutler signed the motions, which were filed with the court on May 22 and August 8, 2014.<sup>19</sup>

After the replevin case failed, Respondent advised Cutler to sue the same defendants for breach of contract.<sup>20</sup> In early September 2014, Respondent drafted a complaint in the breach of contract case.<sup>21</sup> Respondent met with Cutler to discuss the matter.<sup>22</sup> Cutler then retained attorney Jeffrey Mangus to assist with the case and to make electronic filings.<sup>23</sup> Mangus reviewed and signed the complaint, which was filed on September 3, 2014.<sup>24</sup> In October 2014, Respondent met with Cutler—Mangus was not present—to discuss the motions to dismiss filed by opposing counsel.<sup>25</sup>

In August 2014, Respondent met with Cutler to discuss the complaint filed against her by attorney Berkley Freeman.<sup>26</sup> Respondent reviewed billings from Freeman as well as a promissory note.<sup>27</sup> In early September, 2014, Respondent drafted an answer to the complaint.<sup>28</sup> Respondent then met with Cutler and Mangus.<sup>29</sup> Mangus reviewed and signed the answer, which was filed on September 10, 2014.<sup>30</sup> In October 2014, Respondent separately met with Cutler to discuss a settlement proposal from Freeman.<sup>31</sup> Respondent drafted a settlement agreement.<sup>32</sup> Respondent also conferred with Cutler about mediation.<sup>33</sup>

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<sup>13</sup> Pet. ¶ 16.

<sup>14</sup> Pet. ¶ 17.

<sup>15</sup> Pet. ¶¶ 18-19.

<sup>16</sup> Pet. ¶ 20.

<sup>17</sup> Pet. ¶ 21.

<sup>18</sup> Pet. ¶ 22.

<sup>19</sup> Pet. ¶ 23.

<sup>20</sup> Pet. ¶ 24.

<sup>21</sup> Pet. ¶ 25.

<sup>22</sup> Pet. ¶ 26.

<sup>23</sup> Pet. ¶ 27.

<sup>24</sup> Pet. ¶ 28.

<sup>25</sup> Pet. ¶ 29.

<sup>26</sup> Pet. ¶ 30.

<sup>27</sup> Pet. ¶ 31.

<sup>28</sup> Pet. ¶ 32.

<sup>29</sup> Pet. ¶ 33.

<sup>30</sup> Pet. ¶ 34.

<sup>31</sup> Pet. ¶ 35.

<sup>32</sup> Pet. ¶ 36.

<sup>33</sup> Pet. ¶ 37.

Respondent billed Cutler separately for her work on these three cases.<sup>34</sup> Cutler paid Respondent \$4,500.00 for legal services that Respondent was not authorized to provide.<sup>35</sup> When Cutler was unable to pay all of the \$10,000.00 that Respondent ultimately invoiced her, Respondent filed a lawsuit against Cutler, seeking \$11,765.53 for services that she had allegedly provided under the April 2014 consulting agreement.<sup>36</sup> Cutler was not served with the summons or complaint.<sup>37</sup> Even so, Respondent moved for entry of default judgment, which the court granted on December 28, 2015.<sup>38</sup> Respondent then obtained a writ of garnishment, which she served on Cutler's bank.<sup>39</sup> Cutler learned of Respondent's actions only after her bank account was drawn down by the judgment amount.<sup>40</sup> Cutler suffered harm from Respondent's collection of additional funds from her bank account.<sup>41</sup>

### Legal Standards and Analysis

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,<sup>42</sup> restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.<sup>43</sup> To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.<sup>44</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>45</sup> One who acts “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties” engages in the practice of law.<sup>46</sup> Prohibited activities also include the exercise of legal discretion, such as advising clients regarding legal matters.<sup>47</sup>

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<sup>34</sup> Pet. ¶ 13.

<sup>35</sup> Pet. ¶ 40.

<sup>36</sup> Pet. ¶¶ 41-43.

<sup>37</sup> Pet. ¶ 44.

<sup>38</sup> Pet. ¶ 45.

<sup>39</sup> Pet. ¶ 46.

<sup>40</sup> Pet. ¶ 47.

<sup>41</sup> Pet. ¶ 48.

<sup>42</sup> C.R.C.P. 228.

<sup>43</sup> *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.”).

<sup>44</sup> See C.R.C.P. 201-227.

<sup>45</sup> *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

<sup>46</sup> *Shell*, 148 P.3d at 171 (quotation omitted).

<sup>47</sup> *People v. Adams*, 243 P.3d 256, 265-66 (Colo. 2010)

The PDJ finds that Respondent engaged in the unauthorized practice of law throughout 2014 by offering Cutler a wide array of legal advice about her three cases and counseling Cutler about legal strategy. Respondent also prepared Cutler to handle the May 16, 2014, replevin hearing. Later, when Respondent's legal advice about the replevin matter did not prove fruitful, she convinced Cutler to file a new suit based on breach of contract, which required further legal advice. Respondent then met with Cutler—outside the presence of Mangus—to discuss a motion to dismiss filed by the defendants in the breach of contract case. And she twice met with Cutler privately about the money damages case: first, to discuss the complaint filed in that matter, and second to discuss a settlement proposal.

Moreover, Respondent drafted legal pleadings for Cutler, including the replevin complaint, which was drafted without supervision from an attorney. After that complaint was dismissed, Respondent wrote subsequent motions on Cutler's behalf, seeking post-trial relief. And without supervision, Respondent drafted a settlement agreement in the money damages case. Without question these activities amount to the unauthorized practice of law.

### **Restitution, Fines, and Costs**

C.R.C.P. 236(a) provides that, if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each such incident. Here, the People suggest that the PDJ recommend the minimum fine of \$250.00 be imposed because Respondent has no previous history of engaging in the unauthorized practice of law. The PDJ respectfully disagrees with the People that the minimum fine is appropriate here. Respondent engaged in textbook unauthorized practice of law by offering legal advice, drafting legal pleadings for Cutler's use in a judicial proceeding, and counseling Cutler regarding her legal rights and duties. Further, Respondent engaged in the unauthorized practice of law not in one legal matter but in three, and in at least one of these cases, her advice worked to Cutler's detriment. Respondent then pursued additional compensation for the unqualified services she provided, without notice to Cutler. In light of flagrant nature of Respondent's conduct, and because she provided unauthorized legal services in three instances, the PDJ recommends a fine of \$1,500.00, which represents a fine of \$500.00 for each of the three cases in which she provided Cutler legal services.<sup>48</sup>

The People filed a statement of costs on October 3, 2016, as Exhibit B to their motion for default judgment. The statement reflects costs totaling \$244.40 for service of process costs and the People's administrative fee. The PDJ considers this sum reasonable and

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<sup>48</sup> See *People v. Adams*, 243 P.3d 256, 267 & n.7 (Colo. 2010) (ruling that engaging in the unauthorized practice of law maliciously or in bad faith or may warrant imposition of more than the minimum fine, and 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).

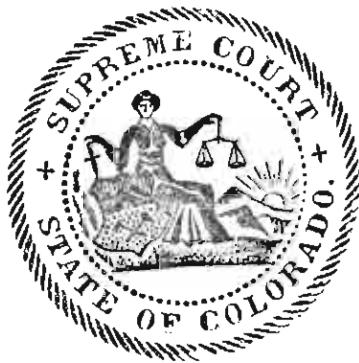
therefore recommends that the Colorado Supreme Court assess \$244.40 against Respondent.  
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Finally, the People recommend an award of restitution to Jill A. Cutler for \$4,500.00, which is the amount that Respondent collected for purported legal services that she provided. The People support their request for restitution with Cutler’s notarized affidavit.<sup>50</sup> The PDJ recommends that Respondent be ordered to pay Cutler \$4,500.00.

#### IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law and **ENJOIN** her from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay **RESTITUTION** of \$4,500.00 to Jill A. Cutler; a **FINE** of \$1,500.00; and to pay **COSTS** in the amount of \$244.40.

DATED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2016.



A handwritten signature in blue ink that reads "William R. Lucero".

WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

Copies to:

Kim E. Ikeler  
Office of Attorney Regulation Counsel

Via Email  
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Dena Mill d/b/a Mill Consulting  
Respondent  
739 Windflower Drive  
Longmont, CO 80504

Via First-Class Mail

Christopher T. Ryan  
Colorado Supreme Court

Via Hand Delivery

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<sup>49</sup> See C.R.S. § 13-16-122 (setting forth an illustrative list of categories of “includable” costs in civil cases, including “[a]ny fees for service of process”).

<sup>50</sup> Mot. for Default J. Ex. A. The People do not appear to seek restitution for the amounts Respondent garnished from Cutler’s bank account.