

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	<p style="text-align: center;"><b>RECEIVED</b></p> <p style="text-align: center;"><b>FEB 19 2013</b></p> <p style="text-align: center;"><b>REGULATION COUNSEL</b></p>
Original Proceeding in Unauthorized Practice of Law, 12UPL008	
<p><b>Petitioner:</b></p> <p>The People of the State of Colorado,</p> <p>v.</p> <p><b>Respondent:</b></p> <p>Kenneth P. Campbell.</p>	Supreme Court Case No: 2012SA147
<b>ORDER OF COURT</b>	

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

IT IS ORDERED that Respondent, KENNETH P. CAMPBELL, 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, KENNETH P. CAMPBELL, is ENJOINED from engaging in the unauthorized practice of law in the state of Colorado.

IT IS FURTHER ORDERED that the Respondent is assessed costs in the amount of \$1,216.40. 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 a fine be imposed in the amount of  
\$250.00.

BY THE COURT, FEBRUARY 19, 2013.



Case Number: 2012SA147  
Caption: People v. Campbell, Kenneth

**CERTIFICATE OF SERVICE**

Copies mailed via the State's Mail Services Division on February 19, 2013. ✕

Kenneth P Campbell  
P.O. Box 1381  
Colorado Spr, CO 80132

Kim E Ikeler  
OFFICE OF ATTORNEY  
REGULATION  
1560 Broadway Ste 1800  
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William R Lucero  
PRESIDING DISCIPLINARY  
JUDGE  
1560 Broadway Ste 675  
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SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	<b>RECEIVED</b>  <b>JAN 07 2013</b>  REGULATION COUNSEL
<b>Petitioner:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> KENNETH P. CAMPBELL	Case Number: <b>12SA147</b>
<b>REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</b>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on an order of the Colorado 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**

The Office of Attorney Regulation Counsel (“the People”) allege that Kenneth P. Campbell (“Respondent”) engaged in the unauthorized practice of law by drafting motions on behalf of Jennifer White and by attempting to represent White in court. The PDJ agrees that Respondent engaged in the unauthorized practice of law by selecting and preparing various motions for White’s use, as well as by entering his appearance as her legal representative in judicial proceedings. The PDJ recommends that the Colorado Supreme Court enjoin Respondent from the practice of law, impose the minimum fine, and award costs in the People’s favor.

### **II. PROCEDURAL HISTORY**

On May 14, 2012, Kim E. Ikeler, on behalf of the People, filed a petition for injunction with the Colorado Supreme Court, alleging that Respondent engaged in the unauthorized practice of law. The Colorado Supreme Court issued its order appointing the PDJ as hearing master on June 29, 2012.

During an at-issue conference on July 18, 2012, a hearing in this matter was scheduled for November 27-28, 2012. On September 13, 2012, Respondent filed a response to the People’s petition, in which he generally denied all allegations and pled affirmative defenses and counterclaims. On

October 9, 2012, the PDJ granted a motion for summary judgment filed by the People and determined as a matter of law that Respondent is not licensed to practice law in Colorado state courts based upon his status as an agent authorized to practice before the U.S. Patent and Trademark Office.

On October 10, 2012, the PDJ issued an order deeming averments 7-14 of the People's petition admitted. That order denied the People's request to deem the remainder of the averments admitted but cautioned that if the evidence at any time were to demonstrate that Respondent's general denial of any remaining averments lacked truth, the PDJ might deem such averments admitted. The People then filed "Petitioner's Demonstration that Respondent's General Denial of Paragraphs 15 Through 104 of the Petition Lacks Truth," ("Demonstration"), which contains evidence that demonstrates Respondent's general denial lacks truth, and which seeks the PDJ's determination that averments 14 through 108 are established.

At the pre-trial conference on November 5, 2012, the PDJ indicated that he intended to deem admitted most of the remaining averments of the People's petition<sup>1</sup> and vacate the unauthorized practice of law hearing unless Respondent presented to the PDJ evidence showing that a hearing was necessary as to the remaining factual allegations or as to a fine. Also during that pre-trial conference, the People waived their right to a hearing on the remaining factual allegations and the appropriate fine in this matter and stipulated to the imposition of a \$250.00 fine—the minimum fine per incident of the unauthorized practice of law under C.R.C.P. 236(a).

On November 9, 2012, Respondent filed "Respondent's Response to Petitioner's Request for an Order Deeming Averments 7 through 108 of the Petition Admitted." On November 13, 2012, Respondent filed his "Supplemental Statements Timely Appended Shortly after Respondent's Response to 'Petitioner's Request for an Order Deeming Averments 6 through 108 of the Petition Admitted,'" as well as a "Table of Authorities." Respondent presented no evidence that his general denial was grounded in truth, nor did he give the PDJ any basis for questioning the evidence presented by the People. As such, the PDJ concluded by order of November 19, 2012, that the People's petition demonstrates Respondent engaged in the unauthorized practice of law as a matter of law, and that a hearing concerning either the factual allegations or the issue of a fine was unnecessary.<sup>2</sup>

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<sup>1</sup> At the pre-trial conference, the PDJ made clear that paragraphs 15 through 104 of the People's complaint are well-supported by document or deposition with the exception of paragraphs 21, 37-38, 73, 76, 78, 87, and 99-102.

<sup>2</sup> The PDJ's order of November 19, 2012, rendered the following motions **MOOT**: "Petitioner's Motion for Telephone Testimony," filed October 5, 2012; "Petitioner's Second Motion for Telephone Testimony," filed October 11, 2012; "Petitioner's Objections to Respondent's Exhibits," filed November 2, 2012; and "Respondent's Motion for a Determination on Questions of Law," filed November 5, 2012.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Findings of Fact**

Respondent is an agent authorized to practice before the U.S. Patent and Trademark Office.<sup>3</sup> However, he is not licensed to practice law in the State of Colorado or any other state.<sup>4</sup>

Jennifer White is a resident of Colorado Springs.<sup>5</sup> On the evening of August 15, 2011, White was involved in a one-car accident in Colorado Springs when her vehicle left the roadway and struck a light pole.<sup>6</sup> She was cited for careless driving and DUI.<sup>7</sup> The citation directed her to appear at the First Appearance Center of the El Paso County Combined Courts on September 26, 2011.<sup>8</sup> Jakrapong Pattamasaevi was assigned to prosecute White for traffic law violations in *People v. White*, El Paso County Court case number 11T10809, and the Honorable Stephen J. Sletta was assigned to preside over the case.<sup>9</sup>

White executed a "Special Power of Attorney" appointing Respondent as her attorney-in-fact on September 19, 2011.<sup>10</sup> The power of attorney authorized Respondent to "prepare, sign and file documents with any governmental body or agency."<sup>11</sup> On September 26, 2011, Respondent filed an entry of appearance in the traffic case, identifying himself as "an attorney in fact duly appointed."<sup>12</sup> Respondent stated that he was "licensed to practice Federal Law in the United States of America" and entered his appearance as "attorney of record" on behalf of White.<sup>13</sup> Respondent represented that he was "a practitioner at law and a member in good standing of the United States Patent Bar," with a registration number of 52,688.<sup>14</sup>

On the same date, Respondent also signed a "Notice of Future Court Appearance and Order to Report," acknowledging that a pre-trial conference had been set in the traffic case for December 14, 2011.<sup>15</sup> This is a form

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<sup>3</sup> Compl. ¶ 4; Answer at 2.

<sup>4</sup> Compl. ¶ 1; Answer ¶ 1.

<sup>5</sup> Compl. ¶ 7; Order Deeming Averments Admitted.

<sup>6</sup> Compl. ¶ 15; Pet'r's Demonstration at 2; Order Vacating Hr'g.

<sup>7</sup> Compl. ¶ 16; Pet'r's Demonstration at 2; Order Vacating Hr'g.

<sup>8</sup> Compl. ¶ 17; Pet'r's Demonstration at 2; Order Vacating Hr'g.

<sup>9</sup> Compl. ¶¶ 13-14; Order Deeming Averments Admitted.

<sup>10</sup> Compl. ¶ 18; Pet'r's Demonstration at 2-3; Order Vacating Hr'g.

<sup>11</sup> Compl. ¶ 19; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>12</sup> Compl. ¶¶ 20, 22; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>13</sup> Compl. ¶¶ 23-24; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>14</sup> Compl. ¶¶ 25-26; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>15</sup> Compl. ¶ 27; Pet'r's Demonstration at 3; Order Vacating Hr'g.

provided by the court.<sup>16</sup> Respondent signed on a line above the words "Attorney/Defendant's Signature."<sup>17</sup>

On October 7, 2011, Respondent filed a "Notice, Claim and Summons to Appear for Trial (Part 1)," thereby commencing *Jennifer White v. City of Colorado Springs*, El Paso County Small Claims Court, case number 11S1031.<sup>18</sup> Magistrate Daniel M. Winograd of the El Paso County Combined Courts was assigned to preside over the case.<sup>19</sup> To file the notice, Respondent used Form JDF 250, which he apparently downloaded from the Colorado state judicial website, [www.coloradosupremecourt.com](http://www.coloradosupremecourt.com).<sup>20</sup> Respondent wrote the portion of this pleading describing White's claim, alleging that unsafe roadway conditions and a deficient traffic control system were the cause of White's accident and contending, "Plaintiff has suffered loss due to Negligence Per Se on the part of the City."<sup>21</sup> Respondent claimed White sustained damages of \$7,500.00, and he signed the pleading "Ken Campbell (Atty)."<sup>22</sup>

Respondent appeared on White's behalf at a hearing on November 17, 2011, in the small claims case.<sup>23</sup> Magistrate Winograd told Respondent that he could not represent White in court.<sup>24</sup>

Respondent wrote to Pattamasaevi, the prosecutor in the traffic case, on December 1, 2011, referencing a phone conversation he had with Pattamasaevi in late September 2011.<sup>25</sup> Respondent listed several issues of fact and law for Pattamasaevi's consideration, including jurisdiction and venue, sufficiency of the evidence, and White's right to a speedy trial, and he urged Pattamasaevi to dismiss the case.<sup>26</sup> Before he sent the letter, Respondent showed it to White, and they discussed its contents.<sup>27</sup>

On December 14, 2011, Respondent filed two motions in the traffic case on behalf of White: a motion to dismiss with prejudice and a motion to change venue.<sup>28</sup> Both motions used Form JDF 76, which Respondent appears to have downloaded from the Colorado state judicial website.<sup>29</sup> Respondent authored

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<sup>16</sup> Compl. ¶ 28; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>17</sup> Compl. ¶ 29; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>18</sup> Compl. ¶¶ 9, 30; Order Deeming Averments Admitted; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>19</sup> Compl. ¶¶ 8-9; Order Deeming Averments Admitted.

<sup>20</sup> Compl. ¶ 31; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>21</sup> Compl. ¶¶ 32-34; Pet'r's Demonstration at 3; Order Vacating Hr'g.

<sup>22</sup> Compl. ¶ 35; Pet'r's Demonstration at 3-4; Order Vacating Hr'g.

<sup>23</sup> Compl. ¶ 36; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>24</sup> Compl. ¶ 39; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>25</sup> Compl. ¶¶ 40-41; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>26</sup> Compl. ¶¶ 42-43; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>27</sup> Compl. ¶ 44; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>28</sup> Compl. ¶ 45; Pet'r's Demonstration at 4; Order Vacating Hr'g.

<sup>29</sup> Compl. ¶ 46; Pet'r's Demonstration at 4; Order Vacating Hr'g.

the portions of the forms setting forth the reasons for the motions and the requested relief.<sup>30</sup> He also included his contact information in the captions.<sup>31</sup>

In the motion to dismiss with prejudice, Respondent cited “Ethics Opinion 62 of the Colorado Bar Association” and contended that Pattamasaevi had engaged in prosecutorial misconduct, requesting that the court dismiss the case or stay the proceedings.<sup>32</sup> In his motion to change venue, Respondent argued the District Attorney’s Office was being influenced in its prosecution of the traffic case by the fact that White had filed the small claims case.<sup>33</sup> Respondent asked the court to dismiss for lack of jurisdiction or to stay the proceedings until the request to change venue had been decided.<sup>34</sup> Respondent discussed the substance of these two motions with White prior to filing them, and then he signed both motions with White’s name.<sup>35</sup>

Also on December 14, 2011, Respondent appeared for White at the pre-trial conference in the traffic case.<sup>36</sup> White did not appear, and Judge Sletta continued the pre-trial conference until the next day.<sup>37</sup> Again, White did not appear, so the judge issued a bench warrant for White’s arrest and entered an order denying the motions to dismiss and to change venue.<sup>38</sup> The judge noted, *inter alia*: “The Court Has Received Pleadings Appointing [Respondent] As Atty For The Defendant. [Respondent] Is Not Authorized To Practice Law In Colorado. Whether Or Not He is Licensed To Appear In The Patent Proceedings Is Irrelevant To This Court.”<sup>39</sup> The judge also suggested that the motions indicated Respondent neither knew the rules of criminal procedure nor understood the jurisdiction of various agencies and courts.<sup>40</sup>

Respondent filed a motion to withdraw in the traffic ticket case on December 19, 2011, using Form JDF 76.<sup>41</sup> As grounds for withdrawal, Respondent stated, “Due to a Violation by the Court to the Constitutional Rights of Defense Counsel itself, at first glance, the Defense can no longer represent the accused to the best of his ability.”<sup>42</sup> Respondent signed the attached certificate of service as “Attorney-In-Fact for the Defense.”<sup>43</sup>

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<sup>30</sup> Compl. ¶ 47; Petr’s Demonstration at 4; Order Vacating Hr’g.

<sup>31</sup> Compl. ¶ 48; Petr’s Demonstration at 4; Order Vacating Hr’g.

<sup>32</sup> Compl. ¶¶ 50-52; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>33</sup> Compl. ¶ 53; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>34</sup> Compl. ¶ 54; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>35</sup> Compl. ¶¶ 49, 55; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>36</sup> Compl. ¶ 56; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>37</sup> Compl. ¶¶ 57-58; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>38</sup> Compl. ¶¶ 59-61; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>39</sup> Compl. ¶ 62; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>40</sup> Compl. ¶ 62; Petr’s Demonstration at 5; Order Vacating Hr’g.

<sup>41</sup> Compl. ¶¶ 63-64; Petr’s Demonstration at 6; Order Vacating Hr’g.

<sup>42</sup> Compl. ¶ 65; Petr’s Demonstration at 6; Order Vacating Hr’g.

<sup>43</sup> Compl. ¶ 66; Petr’s Demonstration at 6; Order Vacating Hr’g.



On or about December 21, 2011, White signed a pleading entitled "Motion to Rule on the Pleadings," which was filed in the traffic case.<sup>44</sup> Respondent prepared this pleading on White's behalf, using Form JDF 76.<sup>45</sup> Respondent composed the argument in support of the request to dismiss the charges, and he discussed the motion with White before she signed it.<sup>46</sup>

On December 22, 2011, Respondent appeared on behalf of White at her driver's license revocation proceeding in Colorado Department of Revenue Hearings Section case number 1128193.<sup>47</sup> White was present in the building but in another room, and she did not appear at the hearing.<sup>48</sup> Respondent provided an attorney registration number of 52,688, which is the number assigned to him as an agent by the U.S. Patent and Trademark Office.<sup>49</sup> At the conclusion of the hearing, Respondent signed his name to acknowledge receipt of the order revoking White's driving privileges.<sup>50</sup>

On December 23, 2011, a motion to recuse for abuse of discretion was filed in the traffic case.<sup>51</sup> Respondent prepared this motion using Form JDF 76, drafted the text of the motion, which accused Judge Sletta of bias against White, and signed White's name to the pleading.<sup>52</sup>

On January 6, 2012, Judge Sletta entered a minute order regarding the bench warrant for White's arrest.<sup>53</sup> Judge Sletta noted that at the pre-trial conference "Defendant Attempted To Appear By Her Attorney In Fact [Respondent]. [Respondent] By His Own Admission Is Not An Attorney Licensed To Practice Law In Colorado Courts."<sup>54</sup>

Using Form JDF 76, Respondent prepared and White signed a motion for separate hearing on entrapment as a matter of law, which was filed on January 6, 2012.<sup>55</sup> Respondent listed his patent office number, 52688, as his "Atty. Reg. #."<sup>56</sup> The motion cited C.R.S. section 42-4-1301 (having to do with driving under the influence of alcohol) and argued that there was no evidence White had been driving while intoxicated.<sup>57</sup> The motion also cited C.R.S. section 18-

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<sup>44</sup> Compl. ¶¶ 67-68; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>45</sup> Compl. ¶ 69; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>46</sup> Compl. ¶¶ 70-71; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>47</sup> Compl. ¶ 72; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>48</sup> Compl. ¶¶ 74-75; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>49</sup> Compl. ¶ 77; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>50</sup> Compl. ¶ 79; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>51</sup> Compl. ¶ 80; Pet'r's Demonstration at 6; Order Vacating Hr'g.

<sup>52</sup> Compl. ¶¶ 81-83; Pet'r's Demonstration at 6-7; Order Vacating Hr'g.

<sup>53</sup> Compl. ¶ 84; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>54</sup> Compl. ¶ 85; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>55</sup> Compl. ¶ 86; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>56</sup> Compl. ¶ 88; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>57</sup> Compl. ¶ 89; Pet'r's Demonstration at 7; Order Vacating Hr'g.

1-709 (entrapment) to contend that White had been induced to remain at the scene of the accident, where her blood alcohol level rose above the legal limit.<sup>58</sup>

Respondent also prepared for White's signature a motion to suppress illegally obtained evidence, which was filed on January 6, 2012.<sup>59</sup> Respondent typed his contact information and patent office number in the caption.<sup>60</sup> The motion cited *Arizona v. Hicks*, 480 U.S. 321 (1987), and it argued that no probable cause existed for White's arrest.<sup>61</sup>

Judge Sletta scheduled a motions hearing for January 25, 2012.<sup>62</sup> White did not appear, and the judge entered a minute order in which he deemed her motions abandoned.<sup>63</sup> In that order, the judge stated, "The Defendant Is Encouraged To Seek The Advice Of A Lawyer In Good Standing To Practice In Colorado."<sup>64</sup> Thereafter, White retained a licensed Colorado attorney to represent her.<sup>65</sup>

### Legal Analysis

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,<sup>66</sup> restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.<sup>67</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>68</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

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<sup>58</sup> Compl. ¶ 90; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>59</sup> Compl. ¶ 91; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>60</sup> Compl. ¶ 92; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>61</sup> Compl. ¶¶ 93-94; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>62</sup> Compl. ¶ 95; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>63</sup> Compl. ¶¶ 96-97; Pet'r's Demonstration at 7; Order Vacating Hr'g.

<sup>64</sup> Compl. ¶ 98; Pet'r's Demonstration at 7-8; Order Vacating Hr'g.

<sup>65</sup> Compl. ¶ 104; Pet'r's Demonstration at 8; Order Vacating Hr'g.

<sup>66</sup> C.R.C.P. 228.

<sup>67</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>68</sup> *See* C.R.C.P. 201-227.

representative of another in a legal action.”<sup>69</sup> Phrased somewhat more broadly, a layperson who acts “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties” engages in the unauthorized practice of law.<sup>70</sup>

Here, Respondent engaged in the unauthorized practice of law by selecting and preparing for White’s signature—and at times signing on White’s behalf—pleadings filed in her traffic case and small claims case. The motions Respondent prepared for White reflect the exercise of legal judgment, knowledge, or skill (although in this instance, as Judge Sletta noted, the filings reflect a misunderstanding of relevant legal principles),<sup>71</sup> which had the potential to profoundly affect White’s “legal rights and duties.”<sup>72</sup> Respondent also engaged in the unauthorized practice of law by entering his appearance and purporting to represent White in the traffic case, the small claims case, and the driver’s license revocation proceeding. Respondent’s efforts on White’s behalf in those judicial proceedings fall squarely within the definition of the practice of law.<sup>73</sup>

As the PDJ has already determined, Respondent’s admission to practice before the U.S. Patent and Trademark Office does not qualify him to practice law in Colorado state courts.<sup>74</sup> Nor does White’s decision to grant Respondent

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<sup>69</sup> *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).

<sup>70</sup> *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.

<sup>71</sup> *See People v. Adams*, 243 P.3d 256, 266 (Colo. 2010) (noting that non-attorneys are barred from performing on another’s behalf activities that require the exercise of legal discretion or judgment); *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”); *Pub. Utils. Cmm’n*, 154 Colo. at 280, 391 P.2d at 471-72 (stating that the practice of law encompasses the preparation for others of “procedural papers requiring legal knowledge and technique”).

<sup>72</sup> *See Shell*, 148 P.3d at 171 (quoting *Pub. Utils. Cmm’n*, 154 Colo. at 279, 391 P.2d at 471).

<sup>73</sup> *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).

<sup>74</sup> 37 C.F.R. § 10.1 (governing the practice of patent, trademark, and other law before the U.S. Patent and Trademark Office and noting that nothing in the statute “preempt[s] the authority of each State to regulate the practice of law, except to the extent necessary for the [PTO] to accomplish its federal objectives”). Respondent argues that *Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379 (1963) shields him from claims that he engaged in the unauthorized practice of law, but the PDJ reads that case as standing for the opposite proposition. *See id.* at 402 (“since patent practitioners are authorized to practice *only before the Patent Office*, the State maintains control over the practice of law within its borders except to the limited extent necessary for the accomplishment of the federal objectives”) (emphasis added); *accord Disciplinary Counsel v. Givens*, 832 N.E. 2d 1200, 1201 (Ohio 2005) (noting that no federal objectives were at stake when the state enjoined the unauthorized practice of law by a layperson).

a power of attorney authorize him to practice law.<sup>75</sup> Thus, as a layperson who has not been licensed to practice law in any state, and whose conduct meets with no specific exception to Colorado's unauthorized practice of law rules, Respondent was not entitled to represent White in a legal capacity in the State of Colorado.

### 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. In this case, the People have stipulated to assessment of the minimum fine, and the PDJ concludes a fine of \$250.00 is appropriate.

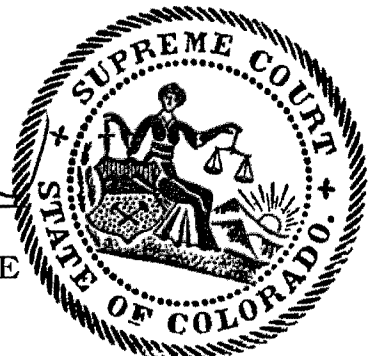
The People filed a statement of costs on November 8, 2012, reflecting costs in the amount of \$1,216.40. Respondent did not file a response. The People are the prevailing party here, and the PDJ finds that their requested costs, which are limited to service of process fees, deposition expenses, and an administrative fee, are reasonable.<sup>76</sup>

### IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado 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 Colorado Supreme Court enter an order requiring Respondent to pay a **FINE** of \$250.00 and to pay **COSTS** in the amount of \$1,216.40.

DATED THIS 7<sup>th</sup> DAY OF JANUARY, 2013.

  
\_\_\_\_\_  
WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE



<sup>75</sup> See, e.g., *Christiansen v. Melinda*, 857 P.2d 345, 349 (Alaska 1993) (“A statutory power of attorney does not entitle an agent to appear pro se in his principal’s place.”) (cited with approval in *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010)); see also *Drake v. Superior Court*, 26 Cal. Rptr. 2d 829, 833 (Cal. App. 1994) (same); *In re Conservatorship of Riebel*, 625 N.W.2d 480, 483 (Minn. 2001) (same); *Estate of Friedman*, 482 N.Y.S.2d 686, 687 (N.Y. Surr. Ct. 1984) (same); *Disciplinary Counsel v. Coleman*, 724 N.E.2d 402, 404 (Ohio 2000) (same); *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. Ct. 1994) (same). Indeed, to confer upon attorneys in fact the privileges of attorneys at law would undermine the system of standards governing attorney licensure, since powers of attorney could easily be used to circumvent those standards.

<sup>76</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”).

