

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 27, 2013
Original Proceeding in Contempt, Office of Attorney Regulation Counsel, 12UPL052	
Petitioner: The People of the State of Colorado, v. Respondent: Marshall Harrell.	Supreme Court Case No: 2012SA352
ORDER OF COURT	

Upon consideration of the Report of Hearing Master Pursuant to C.R.C.P. 239(a) filed in the above cause, and now being sufficiently advised in the premises, IT IS ORDERED that the court Approves the Recommendation of the Presiding Disciplinary Judge.

IT IS FURTHER ORDERED that said Respondent, MARSHALL HARRELL is found to be GUILTY of contempt.

IT IS FURTHER ORDERED that said Respondent, MARSHALL HARRELL is assessed a fine in the amount of \$5,000.00. Said fine to be paid within (60) days from the date of this order.

BY THE COURT, JUNE 27, 2013.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN CONTEMPT BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	RECEIVED MAY 13 2013 REGULATION COUNSEL
Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondent: MARSHALL HARRELL	Case Number: 12SA352
REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 239(a)	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on an “Order of Court” issued by the Colorado Supreme Court on February 28, 2013. In its order, the Colorado Supreme Court referred this case to the PDJ “for entry of default and for findings and recommendations concerning contempt, a fine and costs.”

I. SUMMARY

The Colorado Supreme Court enjoined Marshall Harrell (“Respondent”) from the unauthorized practice of law on November 19, 2008. In 2012, Respondent—who is not a licensed lawyer—assisted a client with her civil collection case, including drafting and filing an answer and a civil advisement form and agreeing to negotiate a settlement of her collections account. Respondent also misrepresented to her that he had settled the collections account. The PDJ recommends that the Colorado Supreme Court sanction Respondent by imposing punitive contempt pursuant to C.R.C.P. 107(d)(1).

II. BACKGROUND

The matter is premised upon an order of injunction entered by the Colorado Supreme Court on November 10, 2008, prohibiting Respondent from engaging in the unauthorized practice of law.¹ In the case at hand, the Office of Attorney Regulation Counsel (“the People”) filed a petition for contempt citation with the Colorado Supreme Court on December 21, 2012, alleging that Respondent violated the Colorado Supreme Court’s November 19, 2008, order of injunction. The Colorado Supreme Court issued a “Citation to Show Cause” on January 14, 2013, ordering Respondent to appear within twenty-one days,

¹ That matter was captioned *People v. Marshall Harrell*, case number 08SA249.

answer in writing, and show cause why he should not be held in contempt for his disobedience of the Court's 2008 order of injunction. Respondent was personally served with the citation to show cause on January 18, 2013. He failed to answer the show cause order or the People's petition. On February 27, 2013, the People filed a "Motion to Proceed." In an order dated February 28, 2013, the Colorado Supreme Court granted the motion to proceed and referred this matter to the PDJ for entry of default and recommendations regarding contempt, a fine, and costs.

On March 6, 2013, the PDJ entered default against Respondent, finding all allegations contained in the People's petition have been admitted and need not be proved. The PDJ also determined that the petition establishes Respondent engaged in willful contempt of the Colorado Supreme Court's order of injunction by engaging in the unauthorized practice of law. The People then filed "Petitioner's Recommendation Regarding Levy of a Fine and Assessment of Costs," requesting a \$2,000.00 fine and \$136.00 in costs.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PDJ issues the following report to the Colorado Supreme Court pursuant to C.R.C.P. 239(a).

Established Factual Findings

The PDJ hereby adopts and incorporates by reference the factual background of this case, as fully detailed in the admitted petition.² Respondent is not licensed to practice law in the State of Colorado or any other state.³ As noted above, the Colorado Supreme Court entered an order enjoining Respondent from the practice of law on November 19, 2008.⁴ Respondent was aware of the order of injunction and was served with it on February 22, 2012.⁵ He had the ability to comply with order by no longer engaging in the unauthorized practice of law.⁶ However, Respondent willfully and repeatedly refused to comply with the order of injunction through the actions discussed below.⁷

The People's contempt allegations concern Respondent's agreement in 2012 to assist Beverly Hoover-Beattie with her civil collection case and the settlement of her collections account with Metro Collection Service, Inc.⁸

² See the People's petition for further detailed findings of fact.

³ Pet. ¶ 1.

⁴ Pet. Ex. A.

⁵ Pet. ¶¶ 5-6.

⁶ Pet. ¶¶ 7-9.

⁷ Pet. ¶ 9.

⁸ Pet. ¶¶ 10-11, 21. Hoover-Beattie's collection case was styled *Metro Collection Service, Inc. v. Beverly Anne Hoover-Beattie*, Douglas County county court, case number 12C2370.

In 2012, Hoover-Beattie met Respondent through her mother, who had been referred to Respondent by a friend who had received legal help from him.⁹ Respondent gave the friend his business card, which was passed along to Hoover-Beattie.¹⁰ The business card bore a “scales of justice” graphic and the company name “Harrell Legal Service.”¹¹ The card described Respondent’s services as “criminal and family defense” and displayed his contact information.¹²

Hoover-Beattie called the telephone number listed on Respondent’s business card and spoke with Respondent, who told her he was finishing law school.¹³ Respondent and Hoover-Beattie met and discussed her collection case, and Respondent agreed to negotiate a settlement of her collections account with Metro Collection.¹⁴ On May 14, 2012, Hoover-Beattie gave Metro Collection permission to speak with Respondent about her account.¹⁵ Respondent, however, never called Metro Collection.¹⁶

On May 15, 2012, an answer was filed in the collection case.¹⁷ It was a standard form and bore the signature of a “Beverly Hoover.”¹⁸ Hoover-Beattie denies signing the answer, as she always signs her name “Beverly A. Hoover.”¹⁹ In fact, Respondent filed the answer and forged Hoover-Beattie’s signature,²⁰ without informing her that he took these actions.²¹ Respondent also filed a civil advisement form contemporaneously with the answer, signing it “Marshall Harrell for Beverly Hoover.”²² Hoover-Beattie did not see this form before it was filed.²³

Around this same time, Respondent told Hoover-Beattie that he had settled her account with Metro Collection for \$700.00, and that he had paid the \$700.00.²⁴ In fact, no settlement had been reached.²⁵ Respondent asked Hoover-Beattie to reimburse him the \$700.00, which she did by check on July

⁹ Pet. ¶ 11.

¹⁰ Pet. ¶ 12.

¹¹ Pet. ¶¶ 13-14.

¹² Pet. ¶¶ 15-16.

¹³ Pet. ¶¶ 17-18.

¹⁴ Pet. ¶¶ 19-21.

¹⁵ Pet. ¶ 22.

¹⁶ Pet. ¶ 23.

¹⁷ Pet. ¶ 24.

¹⁸ Pet. ¶¶ 24-25.

¹⁹ Pet. ¶¶ 26-27.

²⁰ Pet. ¶ 29.

²¹ Pet. ¶ 29.

²² Pet. ¶ 30.

²³ Pet. ¶ 31.

²⁴ Pet. ¶ 33.

²⁵ Pet. ¶ 33.

14, 2012.²⁶ Hoover-Beattie promised to pay Respondent's fees with a separate check.²⁷

On July 18, 2012, Respondent emailed Hoover-Beattie a forged "Letter of Agreement," dated June 19, 2012,²⁸ ostensibly memorializing the alleged settlement between Hoover-Beattie and Metro Collection.²⁹ On July 23, 2012, Hoover-Beattie called Metro Collection and was told no settlement had been reached and no money had been paid on her behalf.³⁰ Hoover-Beattie successfully stopped payment on the \$700.00 check.³¹

Legal Standards Governing Contempt

The Colorado Supreme Court may hold a respondent in contempt for disobeying a court order—including an injunction against the unauthorized practice of law—pursuant to C.R.C.P. 107 and 238-239. As pertinent here, the Colorado Supreme Court may impose "[p]unishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court."³² Punishment may be appropriate for either "direct contempt" that occurs in the presence of the court or, as relevant here, "indirect contempt" that occurs outside the presence of the court.³³

In order for the Colorado Supreme Court to impose punitive contempt, four elements must be present: "(1) the existence of a lawful order of the court; (2) contemnor's knowledge of the order; (3) contemnor's ability to comply with the order; and (4) contemnor's willful refusal to comply with the order."³⁴ The People must prove these elements beyond a reasonable doubt.³⁵

The Colorado Supreme Court issued its order of injunction on November 19, 2008, and Respondent was served with the order on February 22, 2012. Further, Respondent had the ability to comply with the Colorado Supreme Court's order of injunction, but he willfully and repeatedly refused to do so.

²⁶ Pet. ¶¶ 34-35, 37. The memo on the check read: "Payment in Full, MCS #191986, Echo Ridge." Pet. ¶ 36.

²⁷ Pet. ¶ 38.

²⁸ Pet. ¶¶ 39, 41.

²⁹ Pet. ¶ 40.

³⁰ Pet. ¶¶ 42-43.

³¹ Pet. ¶ 44.

³² C.R.C.P. 107(a)(4). Punitive contempt is distinguishable from remedial contempt, which instead is imposed to "force compliance with a lawful order or to compel performance of an act." C.R.C.P. 107(a)(5).

³³ C.R.C.P. 107(a)(2) & (3).

³⁴ *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (quotation omitted).

³⁵ C.R.C.P. 107(d)(1).

The evidence here shows that Respondent willfully selected, drafted, and filed an answer and a civil advisement form in Hoover-Beattie's collections case.³⁶ He forged her signature on the answer and signed the advisement form on her behalf. To prepare legal documents for another—as Respondent did here—amounts to the practice of law.³⁷ Respondent also held himself out to Hoover-Beattie, through his business card, telephone conversations, email, and in-person meetings, as authorized to represent her in the collections case and to negotiate a settlement with Metro Collection on her behalf. An unlicensed person who holds him or herself out as able to provide legal services also engages in unauthorized practice of law.³⁸ Respondent attempted to take \$700.00 from Hoover-Beattie when he misrepresented that he had negotiated and paid a settlement for her. Through the foregoing actions, Respondent willfully and repeatedly engaged in the unauthorized practice of law in direct violation of the Colorado Supreme Court's 2008 order of injunction.

Fine and Costs

When the PDJ makes a finding of contempt but does not recommend imprisonment, the PDJ must recommend that the Colorado Supreme Court impose a fine between \$2,000.00 and \$5,000.00 for each incident of contempt.³⁹ The People ask the PDJ to recommend imposition of the minimum fine of \$2,000.00, given that this was Respondent's first act of contempt and that Hoover-Beattie was able to stop payment on her \$700.00 check. Under the circumstances here, where Respondent made numerous misrepresentations to his client and forged signatures and documents, the PDJ

³⁶ The applicable standards in Colorado Supreme Court case law provide 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." *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).

³⁷ *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); *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 "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").

³⁸ *See Binkley v. People*, 716 P.2d 1111, 1114 (Colo. 1986) ("Anyone advertising as a lawyer holds himself or herself out as an attorney, attorney-at-law, or counselor-at-law and, if not properly licensed, may be held in contempt of court for practicing law without a license."); *People ex rel. Attorney Gen. v. Castleman*, 88 Colo. 207, 207, 294 P. 535, 535 (1930) (holding unlicensed person participating in trial and advertising himself as a lawyer engaged in the unauthorized practice of law, constituting contempt); *People ex rel. Colo. Bar Ass'n v. Taylor*, 56 Colo. 441, 442, 138 P. 762, 763 (1914) (finding unlicensed person advertising himself as a lawyer on his business card guilty of contempt).

³⁹ C.R.C.P. 239(a).

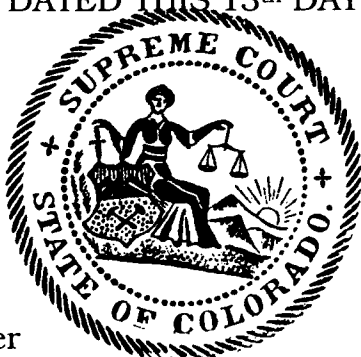
concludes the maximum fine of \$5,000.00 for Respondent's contemptuous conduct is appropriate.

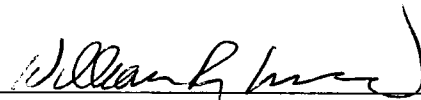
The People also ask for \$136.00 in costs, including a \$45.00 service of process charge and a \$91.00 administrative fee. However, the Colorado Supreme Court held in *Shell* that "costs and fees cannot be assessed when the court imposes punitive sanctions against a contemnor, because C.R.C.P. 107(d)(1) does not expressly authorize their assessment."⁴⁰ That holding reflects an inconsistency between C.R.C.P. 107(d)(1) and C.R.C.P. 239(g), which states that upon receiving the PDJ's report and finding a respondent guilty of contempt, the Colorado Supreme Court shall "prescribe the punishment therefor, including the assessment of costs, expenses and reasonable attorney's fees." Nevertheless, C.R.C.P. 239(g) was in effect at the time of the *Shell* decision and the Colorado Supreme Court presumably was aware of that rule, so the PDJ follows the Colorado Supreme Court's apparent determination that costs may not be imposed in a punitive contempt case involving the unauthorized practice of law.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** Respondent in contempt of court. The PDJ further **RECOMMENDS** that the Colorado Supreme Court **ORDER** Respondent to pay a **FINE** of \$5,000.00 but **DENY** the People's request for costs.

DATED THIS 13th DAY OF MAY, 2013.




WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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⁴⁰ 148 P.3d at 178.