

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

CASE NO. 00SA224

ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW

RECEIVED
MAR 21 2001
ATTORNEY
REGULATION

Petitioner:

THE PEOPLE OF THE STATE OF COLORADO,

Respondent:

LYNDA E. SHOUGH.

AMENDED ORDER OF COURT

Upon consideration of the Findings of Fact, Conclusions of Law and Recommendation of the Presiding Disciplinary Judge, together with the file herein, and now being sufficiently advised in the premises,

IT IS ORDERED that Lynda E. Shough is Permanently Enjoined from the unauthorized practice of law.

IT IS FURTHER ORDERED that Lynda E. Shough shall disgorge \$2,850.00 in fees she collected from Mark Jackson plus interest from the date of payment to her, September 1, 1999.

IT IS FURTHER ORDERED that Lynda E. Shough shall pay restitution to Lynette Jackson n/k/a Lynette Tidwell in the amount of \$9,989.19; and she shall pay restitution to Mark Jackson in the amount of \$13,554.00. Said restitution shall carry interest from the date of this order to the date of payment at the statutory rate pursuant to §5-12-102, 5 C.R.S. (2000).

IT IS FURTHER ORDERED that Lynda E. Shough shall make the payments in the name of the individuals in care of the Colorado Supreme Court Unauthorized Practice of Law Committee, 600 17th Street, Suite 200-South, Denver, Colorado 80202.

BY THE COURT, EN BANC, MARCH 15, 2001.

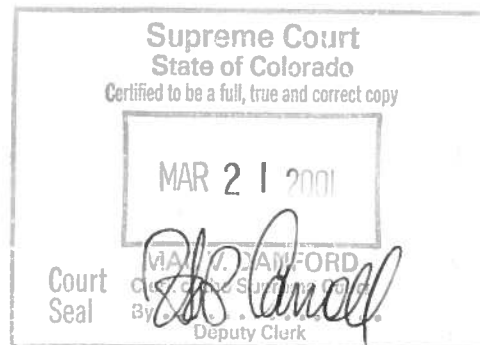


cc:

Lynda Shough
544 E. Abriendo, Suite 210
Pueblo, CO 81004

James Coyle
Assistant Regulation Counsel

Hon. Roger Keithley
Presiding Disciplinary Judge



SUPREME COURT, STATE OF COLORADO
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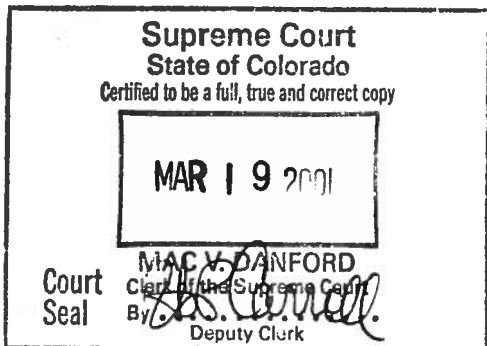


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James Coyle
Assistant Regulation Counsel

Hon. Roger Keithley
Presiding Disciplinary Judge



SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN
ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE
OF LAW BEFORE THE PRESIDING DISCIPLINARY JUDGE
600 17TH STREET, SUITE 510-S
DENVER, CO 80202

Petitioner:

THE PEOPLE OF THE STATE OF COLORADO

Respondent:

LYNDA E. SHOUGH.

Case Number:

00SA224

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On June 28, 2000, the Office of Attorney Regulation Counsel through James C. Coyle, Assistant Regulation Counsel, filed a Petition for Injunction pursuant to C.R.C.P. 234 with the Supreme Court of Colorado seeking an Order to Show Cause why the respondent should not be enjoined from the unauthorized practice of law. On July 6, 2000, the respondent, Lynda E. Shough ("Shough") filed an "Objection to Petition for Injunction and Counter Claim Pursuant to 42 USC § 1981, 1983, 1985 and 13981." On July 10, 2000, the Supreme Court issued a Rule to Show Cause ordering Shough to show cause within twenty days of the service of the Order why she should not be enjoined from engaging in the unauthorized practice of law in the State of Colorado. On July 25, 2000, Shough filed three documents: an "Objection to Show Cause and Counterclaim Pursuant to 42 USC § 1981, 1983, 1985 and 13981," a "Hearing Demand on Constitutional Challenges, Motion for Dismissal and Redress of Grievances," and a "Brief on Constitutional Challenges." On August 14, 2000, Petitioner filed a Reply on Petition for Injunction requesting that the matter be referred to a hearing master for findings of fact, conclusions of law and recommendation. On August 17, 2000 Shough filed an unsigned pleading captioned "Motion for Dismissal, Counter Claim or Hearing on Constitutional." On August 24, 2000, Petitioner filed a Response to Respondent's Motion for Dismissal, Counter Claims and Request for Hearing. On August 31, 2000, the Supreme Court of Colorado remanded the matter to the Presiding Disciplinary Judge ("PDJ") for Findings of Fact, Conclusions of Law and Recommendation.

Upon receipt of the file from the Supreme Court the PDJ issued an Order dated September 19, 2000, scheduling a Status Conference in the matter for September 26, 2000, and served Shough with a copy of the Order by certified mail. Shough signed for the certified mail delivery on September 20, 2000. A

Status Conference was held September 26, 2000 in Courtroom 1 of the Denver District Court. Petitioner was represented by James C. Coyle, Assistant Regulation Counsel. Although she had received notice of the Status Conference, Shough did not appear. At the conclusion of the Status Conference the PDJ issued an Order Re: Evidentiary Hearing Scheduling. The Order set an evidentiary hearing on the injunction issues for December 13, 2000 to be held in El Paso County Judicial Building and bifurcated all other issues for a later determination. All pending motions were taken under advisement. The Order was sent certified mail to Shough, who signed for the certified mail delivery on September 27, 2000.

On October 2, 2000 Petitioner filed a Motion to Amend Petition for Injunction and filed the Amended Petition for Injunction contemporaneously therewith to include additional relief in the nature of refund or disgorgement of attorney fees received and restitution to one "client" as the result of an adverse attorney fee award entered against that client in a litigation matter involving Shough. Shough did not respond to the Motion to Amend the Petition for Injunction and by Order dated October 30, 2000, the PDJ granted the Motion to Amend and accepted the Amended Petition for Injunction.

On October 13, 2000 Petitioner filed a Motion for Sanctions and/or Other Relief pursuant to C.R.C.P. 37(d) due to Shough's failure to attend her scheduled deposition on October 11, 2000 and on October 16, 2000, Petitioner filed a supplement thereto, consisting of a copy of the transcript of the deposition. Shough did not respond to the Motion. On October 16, 2000, Shough filed a pleading with the Supreme Court of Colorado captioned "Notice of Appeal" to the United States Supreme Court. The Notice of Appeal was forwarded to the PDJ by the Supreme Court of Colorado. There is no indication in the PDJ or Supreme Court of Colorado files regarding the disposition of the Notice of Appeal or whether Shough in fact filed it with the United States Supreme Court.

Having received no response to the Motion for Sanctions, on November 17, 2000, the PDJ entered an Order Re: Motion for Sanctions rescheduling the Shough deposition for November 15, 2000 in Room C-142 of the United States District Courthouse, 1929 Stout Street, Denver, CO commencing at 9:00 AM. The Order directed Shough to appear at that time and place and give testimony. The Order further informed Shough that if she failed to do so, sanctions would be imposed including but not limited to striking Shough's responsive pleadings to the Petition for Injunction and limiting testimony on her behalf at the evidentiary hearing.

On November 16, 2000, Petitioner filed a second Motion for Sanctions based upon Shough's failure to comply with the PDJ's November 7, 2000 Order requiring her attendance at the scheduled November 15, 2000 deposition. Shough did not respond to Petitioner's second Motion for Sanctions. On

December 5, 2000, the PDJ granted Petitioner's second Motion for Sanctions, struck Shough's response to the Petition for Injunction and limited Shough's participation in the evidentiary hearing scheduled for December 13, 2000 to testimony from her on her own behalf and cross examination of witnesses presented by Petitioner.¹

On December 4, 2000, Petitioner filed a Motion to Dismiss all claims in the Petition for Injunction with the exception of those claims arising from paragraphs 1 through 13 and 19 through 20 of the Amended Petition for Injunction ("the Jackson matter"). Shough did not respond to the Petitioner's motion.

An evidentiary hearing was held on December 13, 2000 in the El Paso County Judicial Building. Petitioner was represented by James C. Coyle, Assistant Regulation Counsel. Shough did not appear either in person or through counsel. At the commencement of the evidentiary hearing the PDJ granted Petitioner's Motion to Dismiss the aforesaid portions of the Petition for Injunction. By virtue of the orders issued by the PDJ, the matters presented at the evidentiary hearing were limited to the issues set forth in the Amended Petition for Injunction relating to the Jackson matter. At the evidentiary hearing the petitioner presented testimony from Deborah R. Adams, Esq., Judy Girard, LMFT, Lisa M. Dailey, Esq., Robert E. Woodford, Esq., John B. Ciccolella., Esq, and Mark Jackson. Exhibits 1 through 10 were admitted into evidence. Based upon the evidence presented, the PDJ made the following findings of fact.

I. FINDINGS OF FACT

Lynda E. Shough is not licensed to practice law in the State of Colorado.

On June 12, 1997, Lynnette Jackson filed for divorce from Mark Jackson. A Decree of Dissolution of Marriage was entered November 10, 1997. On August 5, 1998, Deborah Adams entered her appearance on behalf of Lynette Jackson and filed a motion to modify child support and a motion to modify another provision of the permanent order previously entered by the court. Greg Maceau represented Mr. Jackson at the time these motions were filed. Eventually, the parties stipulated to various issues raised in the motions and the stipulation was made a part of a court order on January 31, 1999.

On March 14, 1999, Mr. Maceau withdrew as counsel for Mr. Jackson and James English entered his appearance. New motions were filed by the

¹ The Order granting Petitioner's second Motion for Sanctions was originally misdated November 5, 2000 and corrected by an Amended Order to reflect an issuance date of December 5, 2000.

parties and on September 9, 1999, Mr. English withdrew as counsel for Mr. Jackson at his client's request. Although Mr. Jackson had utilized the services of several attorneys during the course of the dissolution proceeding, as a general matter, disputes between the parties were successfully resolved without intensive court intervention.

During the late summer of 1999 Mr. Jackson became acquainted with Shough. Mr. Jackson first learned of Shough when she appeared on a local radio program discussing the effectiveness of trusts to protect assets. Mr. Jackson, who had become disenchanted with the progress of his dissolution proceeding and desiring to protect his assets, contacted Shough and arranged an appointment. He discussed protecting his assets with her and she offered to and did prepare five trusts for him. Shough told Mr. Jackson that she was a law school graduate but had not passed the bar examination. Mr. Jackson paid Shough \$2,850 in fees to prepare the five trusts for him. During the course of Shough's trust work for Mr. Jackson, they discussed the problems he faced in the dissolution action. Shough offered to "champion his cause."

In accordance with that offer, Shough prepared several motions to be filed in the El Paso District Court domestic relations action for Mr. Jackson's signature. Shough told Mr. Jackson to sign and file the motions and she would take care of him. Mr. Jackson signed the motions and between September 9, 1999 and October 1, 1999 filed them in the El Paso County District Court dissolution action. See Exhibit 1, pages 141, 143, 172, 176, 179, 184, 189, 194, 204, 205, 206, 207, 208 and 209. Each of these motions involved the determination of issues which would affect the legal rights and responsibilities of Mr. Jackson. Although Mr. Jackson did not pay Shough for the preparation of these motions she informed him that she would take 20% of the property settlement for her fee. The series of motions requested removal of the child from the care of Mrs. Jackson, alleged a host of constitutional violations by the court, objected to the constitutionality of the Colorado Uniform Dissolution of Marriage Act and requested that the parenting coordinator be removed as she was "a lesbian and biased in favor of lesbians."

In addition, Shough prepared a complaint and on September 15, 1999, filed it in the United States District Court for the District of Colorado. The complaint was captioned *Mark W. Jackson and Robert C. Jackson, a minor child through Lynda E Shough, as best and trustee, and Mark Jackson as father, plaintiffs/petitioners v. Judy Girard, the State of Colorado, Kenneth Salazar, in his official capacity, Colorado's 4th Judicial District, Gilbert Martinez, in his official capacity, Lynette Jackson, Pamela S. Jones and Peter Booth, in official capacity, defendants/respondents*. The case number was 99-K-1810. Shough affixed her name to the complaint as "pro se litigant" and as attorney for plaintiff. See Exhibit 2, pages 42 - 108. The complaint alleged violations of various constitutional rights of Mr. Jackson and sought injunctive relief,

redress of grievance, actual damages, punitive damages, assignment of costs and a trial to a jury. Shough informed Mr. Jackson that she would take 20% of any recovery for her fee.

On September 23, 1999, Judge Zita L. Weinshank for Judge John L. Kane, Jr. dismissed the federal court complaint. The Order of Dismissal reads in part:

This action is dismissed. It was filed ostensibly by Lynda E. Shough, pro se, yet involves as plaintiffs two other individuals, one a minor whom Shough attempts to represent "as best and trustee." Lynda E. Shough may only represent herself. There is no basis in law for a pro se litigant to represent others. Nothing in the complaint shows any injury personal to Lynda E. Shough. Finally, even pro se plaintiffs are bound by the requirements of Rule 8(a) of the Federal Rules of Civil Procedure mandating that a complaint contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. The submitted complaint is prolix rather than short, confused rather than plain and fails to specify the basis for this court's jurisdiction.

Shough informed Mr. Jackson that the federal suit had been dismissed and that she would prepare a motion to reconsider. Shough did prepare and file a Motion to Reconsider on behalf of Mr. Jackson. See Exhibit 2, pages 9 – 13. Mr. Jackson retained Dave Olikas and paid him \$700 to review the federal action.

On October 7, 1999, counsel for Mrs. Jackson in the El Paso County domestic relations case withdrew. On October 15, 1999, Lisa Daily entered her appearance on behalf of Mrs. Jackson and filed an emergency motion to restrict parenting time with Mr. Jackson. In that motion, Attorney Daily complained that Mr. Jackson had filed a series of motions during September contrary to the letter and intent of the co-parenting agreement.

The motions prepared by Shough and eventually filed by Mr. Jackson in his domestic relations case were unintelligible and rambling much like the complaint Shough filed in federal court. During the period of time Shough was preparing pleadings for Mr. Jackson, the already strained relationship between Mr. Jackson and his former wife became more hostile and threatening. As a result of the barrage of motions prepared by Shough and filed by Mr. Jackson, counsel for Mrs. Jackson was required to expend a substantial amount of time to respond to the allegations set forth therein and, consequently, filed a motion for attorney's fees.

By December, 1999, Mr. Jackson fired Shough and hired attorney Robert Woodford to represent him and respond to the motion for attorney fees. Through counsel, Mr. Jackson sought the immediate withdrawal of all motions prepared by Shough and filed by him in the domestic relations case. Mr. Jackson explained to the court in response to the motion seeking attorney's fees that he "was totally unaware that Ms. Shough was also engaging in a campaign of terror against various participants in this case, which included death threats, surveillance and menacing correspondence with various individuals including the parenting coordinator and petitioner's legal counsel." Notwithstanding Mr. Jackson's explanation, the court assessed approximately \$20,000 in attorney's fees against Mr. Jackson for Mrs. Jackson's attorneys being required to respond to the Shough motions.

As a direct result of Shough's conduct in the domestic relations case, all remaining trust between Mr. Jackson and his former wife was destroyed, significant disputes arose regarding child custody and the El Paso District Court ordered that a guardian ad litem ("GAL") be appointed for the child. Mrs. Jackson was required to pay GAL fees of \$1,557 as a result. Mr. Jackson has paid \$875 of his \$1,557 GAL bill and still owes \$584. These expenditures would not have been necessary except for the actions taken by Shough which destroyed the trust between the parties.

During phone calls and in correspondence, Shough held herself out to be an attorney. On numerous occasions she corresponded with counsel for Mrs. Jackson using the letterhead of "The Liberty Tree Trust, We Fight So That Others May Be Free," in which she argued for Mr. Jackson's position and attempted to negotiate the dispute. See Exhibit 1, pages 161 - 167. Shough gave legal advice to Mr. Jackson on numerous occasions and prepared pleadings on his behalf which ultimately resulted in the assessment of attorney's fees against Mr. Jackson. Shough also prepared and filed a complaint in the United States District Court naming herself, Mr. Jackson and his son as plaintiffs and represented herself as the attorney of record.

Mrs. Jackson was required to pay additional attorney's fees to her counsel as the direct result of Shough's involvement which otherwise would not have been required as follows:

- A. Mrs. Jackson paid Lisa Daily an additional \$2,249.67 to defend the motions prepared by Shough in the domestic relations matter. See Exhibit 1, page 294.
- B. Mrs. Jackson paid Michael Martin \$1,056.25 to defend the federal court action. See Exhibit 1, page 303.

- C. Mrs. Jackson paid John Ciccolella \$3,377.35 to resolve issues created by the motions prepared by Shough in the domestic relations matter. See Exhibit 10.
- D. Mrs. Jackson paid guardian ad litem fees of \$1,557.

Mark Jackson was required to pay the following sums as the direct result of Shough's involvement in the domestic relations matter and the federal court action:

- A. Mr. Jackson paid David Olivas \$700 for legal advice to review the federal court action.
- B. Mr. Jackson paid Robert Woodford \$11,395 in the domestic relations matter after Mr. Jackson stopped using Shough to resolve issues raised by her involvement.
- C. Mr. Jackson paid \$875 in guardian ad litem fees and still owes the GAL \$584.08.
- D. Mr. Jackson paid \$2,850 to Shough as legal fees for the preparation of five trusts.

After Mr. Jackson stopped using Shough's services, Shough threatened to expose the existence of the trusts as a method of shielding assets to Mr. Jackson's ex-wife and carried through on her threat. Shough also threatened to discredit Mr. Jackson with his real estate partners. Her involvement in his case has adversely affected his relationship with his son and substantially reduced his parenting time with his son.

II. CONCLUSIONS OF LAW

The Supreme Court has exclusive authority under the Colorado Constitution to regulate and control the practice of law, and to prohibit the unauthorized practice of law. *Unauthorized Practice of Law Committee of the Supreme Court of Colorado v. Prog.*, 761 P.2d 1111, 1116 (Colo. 1988). The court therefore has jurisdiction over respondent in this matter.

The Supreme Court of Colorado defined the meaning of the practice of law in *Denver Bar Association v. P. U.C.*, 391 P.2d 467, 471 (Colo. 1964). There the Court stated:

There is no wholly satisfactory definition as to what constitutes the practice of law; it is not easy to give an all-inclusive definition. We believe that generally 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 him in connection with these rights and duties is engaged in the practice of law.

There is no doubt that Shough's involvement with the Jackson case meets the test of that definition. Shough's representation to the United States District Court that she served as the attorney for herself, Mr. Jackson and his son constituted her acting in a representative capacity in court. Her attempts at negotiation on behalf of Mr. Jackson in connection with his domestic relations case, her holding herself out as an attorney and the representative of Mr. Jackson in that case constitutes the practice of law. In addition, Shough prepared numerous legal instruments, each of which had the potential of affecting, modifying or altering Mr. Jackson's legal rights and responsibilities. Under the mandate of *Denver Bar Association, supra*, such conduct is the practice of law and reserved for those properly licensed to act as an attorney. Shough was not licensed to practice law at the time the events set forth in the amended petition transpired.

Shough's unauthorized practice of law caused serious injury to her "client" and his family. It generated a substantial amount of additional and unnecessary litigation, an excessive expenditure of court time and destroyed what little trust remained between Mr. and Mrs. Jackson at their expense and that of their son. Shough collected \$2,850 from Mr. Jackson for her "legal services" without authority and by her conduct caused both Mr. Jackson and Mrs. Jackson to expend substantial sums of money to correct the difficulties which were the direct result of Shough's involvement.

The Amended Petition for Injunction seeks relief in the nature of an injunction prohibiting Shough from engaging in the unauthorized practice of law, an order directing Shough to disgorge the \$2,850 in fees she collected from Mr. Jackson for the preparation of the five trusts, an order directing Shough to pay restitution to Mr. Jackson of an amount of \$13,652 and an order directing Shough to pay restitution to Mrs. Jackson in the amount of \$9,989.19.

The evidence presented firmly establishes that Shough engaged in the unauthorized practice of law and should be enjoined from doing so in the future. Moreover, the applicable rules governing the unauthorized practice of law provide for restitution to those injured by the respondent's actions.

C.R.C.P. 234(b) provides:

(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, and assessment of costs of the proceeding.

C.R.C.P. 237(a) provides, in part:

(a) If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

Accordingly, the Rules of Civil Procedure governing the unauthorized practice of law both authorize the pursuit of disgorgement of fees charged and the restitution of monies lost as the direct result of the offending conduct. Shough should be ordered to refund to Mr. Jackson the \$2,850 she received from him for the preparation of the five trusts plus statutory interest pursuant to § 5-12-102, 5 C.R.S. (2000) from the date she received those funds in August 1999. See *People v. Love*, 775 P.2d 26, 27 (Colo. 1989)(ordering the disgorgement of fees charged in an unauthorized practice of law matter); *In re Ray*, 675 A.2d 1381, 1389 (D.C. 1996)(ordering restitution when attorney engaged in the unauthorized practice of law and accepted a fee from an estate without authorization); *Florida Bar v. Lerner*, 485 So. 2d 826, 827 (Fla. 1986)(ordering respondent to make full and complete restitution to all parties who paid attorney's fees to respondent or who were otherwise defrauded by his engaging in the unauthorized practice of law).

Restitution is not defined by the Rules of Civil Procedure; however, guidance as to its meaning may be derive from other sources. § 16-18.5-102(3)(a), 16 C.R.S. (2000) defines restitution in a criminal law context as:

[A]ny pecuniary loss suffered by a victim, and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, adjustment expenses, and other losses or injuries proximately caused by the offender's conduct and that can be reasonably calculated and recompensed in money.

It may include extraordinary direct public and all private investigative costs. See § 16-18.5-102 (3)(b), 16 C.R.S. (2000). Colorado courts have confirmed the concept of restitution to include an award to make the victim whole, *People v. Dillingham*, 881 P.2d 440, 442 (Colo. App. 1994), and to compensate for the full pecuniary loss caused by the wrongdoer, *People v. Armijo*, 989 P.2d 224, 226 (Colo. App. 1999). At least in the criminal context, proof of causation of the victim's loss only requires that it exist to the degree that there is competent evidence in the record. See *People v. Carpenter*, 885 P.2d 334, 336 (Colo. App. 1994).

An award of restitution in the context of an unauthorized practice of law case serves several functions. It will endeavor to make the victim whole, provide some measure of rehabilitative effect and add a deterring incentive to others inclined to engage in similar conduct.

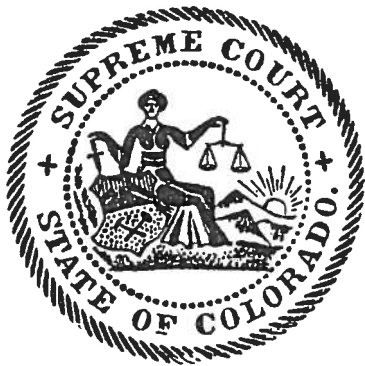
Persons found to have engaged in the unauthorized practice of law should be under both a moral and legal obligation to rectify the harm caused by their conduct. Awarding restitution in circumstances where the losses or injuries are subject to reasonable calculation will foster the purposes of the unauthorized practice of law rules.

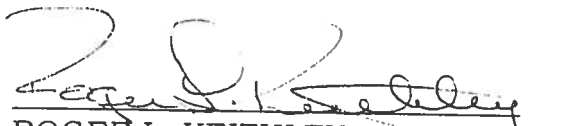
The losses suffered by both Mr. and Mrs. Jackson as a direct result of Shough's unauthorized practice of law are subject to reasonable calculation, are supported by the evidence presented and should be ordered by the court to be paid by Shough, with interest.

III. RECOMMENDATION

The Supreme Court of Colorado should permanently enjoin Lynda E. Shough from the unauthorized practice of law; enter an order directing Lynda E. Shough to disgorge the \$2,850 in fees she collected from Mr. Jackson plus interest from the date of payment to her, September 1, 1999; to pay restitution to Lynette Jackson n/k/a Lynette Tidwell in the amount of \$9,989.19; and to pay restitution to Mark Jackson in the sum of \$13,554. The restitution payments should carry interest from the date of the Supreme Court's Order to the date of payment at the statutory rate pursuant to § 5-12-102, 5 C.R.S. (2000).

DATED THIS 1st DAY OF MARCH, 2001.




ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

