Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 23, 2019 CASE NUMBER: 2017SA244
Original Proceeding in Unauthorized Practice of Law, 2017UPL2	
Petitioner: The People of the State of Colorado, **v.** **Respondent:** Susan Renee Zebelman Vigoda.	Supreme Court Case No: 2017SA244
ORDER OF INJUNCTION	

Upon consideration of the Report of Hearing Master Under C.R.C.P. 236(a) and the Petitioner's Motion to Dismiss Respondent's Objection filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion to Dismiss Respondent's Objection shall be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that SUSAN RENEE ZEBELMAN VIGODA is ENJOINED from engaging in the unauthorized practice of law in the State of Colorado.

IT IS FURTHER ORDERED that Respondent is assessed costs in the amount of 224.00. 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 pay a fine in the amount of $500.00.

IT IS FURTHER ORDERED that SUSAN RENEE ZEBELMAN VIGODA pay Restitution to Janet Rosendahl-Sweeney in the amount of $1000.00.

BY THE COURT, JANUARY 23, 2019.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** SUSAN RENEE ZEBELMAN VIGODA	Case Number: **17SA244**
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

In this matter, Susan Renee Zebelman Vigoda ("Respondent") is alleged to have engaged in the unauthorized practice of law. William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), finds that the Office of Attorney Regulation Counsel ("the People") have proved by a preponderance of evidence that Respondent engaged in the unauthorized practice of law by selecting forms for a client in a dissolution proceeding, drafting pleadings, and giving that client legal advice. The PDJ recommends that the Colorado Supreme Court enjoin Respondent from the unauthorized practice of law.

I. PROCEDURAL HISTORY

On behalf of the People, Kim E. Ikeler filed a petition for injunction with the Colorado Supreme Court on October 11, 2017. The Colorado Supreme Court issued an "Order to Show Cause" on October 16, 2017, but Respondent did not respond to the petition. The Colorado Supreme Court entered an order on November 22, 2017, referring this matter to the PDJ for "findings of fact, conclusions of law, and recommendations."

On November 27, 2017, the PDJ issued an order to show cause; in response, Respondent emailed the PDJ on December 11, 2017, partially responding to the People's petition and seeking reasonable accommodations under the Americans with Disabilities Act ("ADA"). She claimed that she was hearing impaired, that she participated in Colorado's address confidentiality program, and that she cared for small children full time.[1] As an accommodation, the PDJ agreed to keep Respondent's address confidential and suppressed all documents identifying her location. The PDJ also advised Respondent that the courtroom

[1] Letter from Respondent (Dec. 11, 2017). She included a notarized letter from her therapist, Jill M. Frazin, LCSW, who stated that Respondent had been the subject of threats and was "hearing disabled and disabled otherwise." Exhibit to Letter from Respondent (Dec. 11, 2017).

could accommodate her hearing issues and directed her to indicate what other accommodations she might need. Finally, the PDJ ordered Respondent to file an additional response to the People's petition by January 2, 2018. She did not do so.

On January 12, 2018, the PDJ permitted the parties to set the hearing in this case via email to accommodate Respondent's hearing disability and childcare responsibilities. The PDJ also accepted Respondent's letter dated December 11, 2017, as a response to the People's petition. On January 23, 2018, the PDJ issued a scheduling order, setting the hearing for June 20, 2018. The PDJ also set other prehearing deadlines. Seven days later, the PDJ granted the People's request for a prehearing conference to address, among other things, Respondent's purported disability and reasonable accommodations that could be made for her.

Failure to Provide Disclosures

The parties were ordered to exchange initial disclosures by February 6, 2018, but Respondent failed to make any disclosures. On March 30, 2018, the People moved to compel her disclosures. In their motion, the People informed the PDJ that Respondent had said she was unable to provide disclosures because she faced an "emergency with her kids," was "afraid to be in [her] own home," and had an "enormous amount to attend to" concerning her children.[2] The PDJ granted the People's motion and compelled Respondent to produce her initial disclosures by April 27, 2018.

On April 9, 2018, Respondent moved by email to dismiss the People's case.[3] The PDJ denied this motion on April 23, 2018. Meanwhile, Respondent failed to make any disclosures to the People, so the PDJ granted the People's motion for sanctions under C.R.C.P. 37(c), precluding Respondent from introducing evidence at the hearing that she failed to previously disclose to the People.

Motions for Continuance

During this matter, Respondent asked for numerous continuances on account of her alleged disabilities and medical problems. The PDJ notes that he could never get a clear picture of these various issues, as Respondent's narrative continuously shifted during the proceeding. The PDJ issued numerous orders addressing the insufficiency of information supporting her requests to continue; he repeatedly asked her for corroborating information establishing her disabilities and her need for accommodations. Respondent's requests and the PDJ's orders are detailed below.

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[2] Mot. to Compel Ex. 1.

[3] As an additional accommodation to Respondent, the PDJ permitted Respondent to file motions in email format. Respondent, however, sent numerous emails to the PDJ and the People during the pendency of this proceeding, many of which did not request specific relief from the PDJ. As such, the PDJ did not act on each email Respondent sent.

Respondent first asked for a continuance through a series of emails sent between May 9 and May 18, 2018. On May 9, 2018, Respondent requested a ninety-day continuance because she could not "address matters due to [her] disability."[4] Six days later, she said that she needed to be "well enough to work on defending" herself.[5] In a May 17, 2018, email, Respondent maintained that she was "too disabled to attend to matters related to her case."[6] In that email, she included a letter from physician's assistant Sue Griffith, who attested that Respondent had suffered several recent traumas and was unable to perform her daily tasks but was getting better.[7] The next day, Respondent asked the PDJ to continue the prehearing conference on May 21, claiming that she had been "assaulted as well as that [she was] disabled already and [she] need[ed] time to process things."[8] The PDJ declined to continue the prehearing conference but permitted Respondent to attend by telephone so she would not have to travel to the courtroom.[9]

During the prehearing conference on May 21, 2018, Ikeler appeared on behalf of the People and Respondent attended by telephone. Respondent again asked to continue the hearing. She told the PDJ that her hearing was no longer an issue but that she suffered from irritable bowel syndrome ("IBS") and needed frequent bathroom breaks. She also told the PDJ that she was hit by a car in 1989, had recently been assaulted, and wanted to be "well enough" to attend the hearing. She vowed to get additional information from her doctors concerning these disabilities and limitations. The People stated that they spoke with Griffith, who opined that Respondent could attend the hearing in person.

During the prehearing conference, the People withdrew their objection to Respondent's late disclosure of witnesses and exhibits, and the PDJ extended Respondent's time for disclosures until May 28, 2018.[10] The PDJ also directed Respondent to attend the June hearing in person and advised her that should she fail to appear, the hearing would continue without her.[11] The PDJ reminded Respondent that the courtroom was equipped with technology to address hearing impairments and that he would allow frequent bathroom breaks.[12]

On May 21, 2018, the PDJ issued an order denying Respondent's combined requests to continue the hearing for lack of good cause.[13] The PDJ concluded that Griffith's letter was too vague and lacked clarity about whether Respondent suffered from a disability that

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[4] Email from Respondent (May 9, 2018, at 1:10 p.m.).
[5] Email from Respondent (May 15, 2018, at 3:05 p.m.). She also told the PDJ that she had found someone to take care of her children, and that she would work to get a letter from her doctor about her disability. Email from Respondent (May 15, 2018, at 4:06 p.m.).
[6] Email from Respondent (May 17, 2018, at 12:07 p.m.).
[7] Attachment to email from Respondent (May 17, 2018, at 12:07 p.m.).
[8] Email from Respondent (May 18, 2018, at 1:11 p.m.).
[9] "Order Re: Prehearing Conference" (May 18, 2018).
[10] "Order Re: Prehearing Conference" (May 21, 2018).
[11] "Order Re: Prehearing Conference" (May 21, 2018).
[12] "Order Re: Prehearing Conference" (May 21, 2018).
[13] *See* "Order Denying Respondent's Motion to Continue Hearing" (May 21, 2018).

would require the hearing to be continued.[14] The PDJ also noted that Respondent had said during the prehearing conference that her hearing disability was no longer an issue.[15] On May 22, 2018, the PDJ denied Respondent's request for a hearing before a jury.

On May 23, 2018, Respondent again moved for a continuance. This time, she submitted a letter from David J. Davis, M.D. in support.[16] In that letter, Dr. Davis stated that Respondent had a "history of PTSD (Post Traumatic Stress Disorder) and report[ed] recently being assaulted twice."[17] The letter also stated that Respondent suffered from "chronic back pain [which] has been aggravated as well as her PTSD and Irritable Bowel Syndrome."[18] Dr. Davis opined that Respondent was "not able to do all of her daily functions and will need time to recover. It is anticipated that it may take 1-3 months for her to work through this."[19] The PDJ determined that Dr. Davis's letter established good cause and granted Respondent's motion.[20] In that order, the PDJ cautioned that he would require a heightened evidentiary showing of good cause for any future continuance request.[21] The hearing was later reset for September 5, 2018.

Before the hearing was continued, Respondent served subpoenas on her intended witnesses: Janet Rosendahl-Sweeney, Mark Rosendahl-Sweeney, and Tracy Opp. The PDJ quashed those subpoenason June 18, 2018, June 28, 2018, and July 2, 2018, respectively. Respondent was granted leave to re-issue the subpoenas before the hearing on September 5, but she did not do so.

On July 15, 2018, Respondent requested a continuance for a third time, maintaining that she now could not "see or function very well" and asserting for the first time that she did "not even know what the complaint" was against her.[22] She requested an indefinite continuance to resolve her vision issues and attached a one-sentence letter from Warren Tripp, M.D., which stated: "[Respondent] has bilateral cataracts which are significantly decreasing her vision and cataract surgery is necessary to improve her vision."[23] The PDJ denied Respondent's request, finding no good cause. The PDJ reasoned that Dr. Tripp's letter failed to show that Respondent was limited in her ability to prepare for, attend, or effectively represent her interests at the hearing. The PDJ noted that Respondent had successfully filed several motions and sent numerous emails to the PDJ despite her vision impairment, and that her past filings indicated that she understood the nature of the People's claims.

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[14] *See* "Order Denying Respondent's Motion to Continue Hearing."
[15] *See* "Order Denying Respondent's Motion to Continue Hearing."
[16] Email sent from Respondent (May 23, 2018, at 10:40 a.m.) (confidential).
[17] Letter from Davis (May 22, 2018) (portions suppressed).
[18] Letter from Davis.
[19] Letter from Davis.
[20] "Order Granting Second Request to Continue Hearing" (May 31, 2018).
[21] "Order Granting Second Request to Continue Hearing" (May 31, 2018).
[22] Email from Respondent (Jul. 15, 2018, at 1:10 p.m.).
[23] Attachment to email from Respondent (Jul. 15, 2018, at 1:10 p.m.). The letter was not on the physician's letterhead.

On July 20, 2018, Respondent submitted a notarized statement from her in-home care provider, Dorthea DeZonea, who stated that Respondent would be bedridden until July 26. DeZonea also attested that Respondent was recovering from injuries and required continuous use of icepacks to address inflammation.[24] That same day, Respondent—for a fourth time—requested continuance of the hearing, this time claiming that she needed surgery in one eye in order to read.[25] She also said that one of her witnesses, Timothy Tipton, had been in a motorcycle accident and was having surgery to repair his skull.[26]

On August 2, 2018, Respondent submitted an affidavit from another in-home caregiver, Elizabeth Dworak, who attested that Respondent was working "through recovering from injuries and ha[d] limited vision from cataracts and other eye conditions or disease."[27] Dworak said that Respondent needed a "continuous stream of ice packs," could only "minimally" see, and could not "drive or walk anywhere alone without assistance."[28]

On August 7, 2018, the PDJ denied Respondent's fourth request for a continuance, finding once again that she had not established good cause because her motion was largely premised on the same grounds as her last motion, she failed to submit sufficient documentation supporting her motion, and Dworak did not state whether she was a licensed health care worker or describe her medical experience or education.[29] The PDJ noted that Respondent had recently sent the PDJ several detailed emails, leading the PDJ to believe that Respondent was able to prepare for the hearing. Faced with Respondent's shifting narratives about her alleged disabilities, the PDJ also remarked that Respondent's repeated requests for continuances lacked credibility.[30]

Respondent filed a fifth request for a continuance on September 4, 2018, advising the PDJ that she had suffered a stroke at age thirty-two, that her left side was now numb, and that she was "heeding warnings from [her] doctors to follow a certain plan."[31] Respondent attached no supporting documentation from a physician, nor did she describe the "plan." As before, the PDJ found a lack of good cause to continue the hearing but told Respondent that she could appear by telephone to accommodate her ostensible inability to travel to the courtroom.[32]

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[24] Attachment to email from Respondent (Jul. 20, 2018, at 8:17 a.m.).

[25] Email from Respondent (Jul. 20, 2018, at 8:17 a.m.). Respondent also sent six additional emails to the PDJ and the People between August 1 and August 3, 2018. Because many of these emails appeared to be correspondence with the People, the PDJ directed Respondent to discontinue her practice of including the PDJ on those emails.

[26] Email from Respondent (Jul. 20, 2018, at 8:17 a.m.). The PDJ notes that Respondent did not disclose Tipton as a witness, nor did she subpoena his appearance.

[27] Attachment to email from Respondent (Aug. 2, 2018, at 4:36 p.m.).

[28] Attachment to email from Respondent (Aug. 2, 2018, at 4:36 p.m.).

[29] "Order Denying Fourth Motion to Continue Hearing" (Aug. 7, 2018).

[30] "Order Denying Fourth Motion to Continue Hearing" (Aug. 7, 2018).

[31] Email from Respondent (Sept. 4, 2018, at 8:38 a.m.). Although Respondent did not explicitly request a continuance, the PDJ treated her filing as yet another such request.

[32] "Order Denying Fifth Motion to Continue Hearing" (Sept. 4, 2018).

Unauthorized Practice of Law Hearing

The PDJ held the hearing on September 5 and 6, 2018. Ikeler appeared for the People, and Respondent attended by telephone.[33]

On the morning of September 5, 2018, Respondent orally asked for a continuance and made a record of her disability. She told the PDJ that she could not attend the hearing because she was "sick" and had a "pinched nerve," possible reoccurrence of a "TIA," and "IBS."[34] She said that her in-home care agency had sent her a violent caretaker who "robbed" her and that she was "disabled worse than she was before" because of an "assault" and "glaucoma." She further maintained that her eye doctor was concerned that she had "detached retinas" and "cataracts." She vowed to get additional medical documentation. As a result of these circumstances, she said, she was unable to get up to speed in this case. She also claimed that Tipton, one of her witnesses, was unavailable because he had his "skull surgically replaced."

Additionally, Respondent contended that she could not recall receiving the People's petition in November 2017 nor did she know what the People's charges were, because she could not see well enough to read the People's initial disclosures, prehearing materials, or non-stipulated exhibits. She further averred that she had not read any of the PDJ's orders.

The PDJ directed that the hearing go forward. He heard testimony from George Sweeney and Janet Rosendahl-Sweeney as well as telephone testimony from Robert C. Rosendahl.[35] The PDJ also admitted the People's exhibits 2, 4, 7, 9, 11, 17-20, 23, 25, 29-31, 33, 42, 44, 46-48, 51-52, 54-55, 61-63, 66, 68, 70-72, 74-76, 84, 86-91, 97-99, 103-104, 106-108, 113-117, 146, 151, and 154.

In the middle of the first day, in order to allow Respondent extra time to prepare for her cross-examination of Rosendahl-Sweeney, the PDJ recessed until the next morning at 9:00 a.m. The next morning, Respondent once again told the PDJ she could not proceed, claiming in part that she was not "doing very well"; was "going through a lot," including being robbed by a home health care worker; was "too disabled" and "could not see" well enough to disclose any evidence to the People or read anything they had sent her; had to schedule cataract surgery; and never read the PDJ's orders (or had anyone read them to her) in this matter because she had "so much to address with her health."

When asked how she composed the numerous emails she had sent to the PDJ during the course of the proceeding, Respondent claimed that her neighbor and her neighbor's daughter—who were ostensibly then both of town—had helped her compose each email

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[33] The hearing was initially scheduled for one day, but the PDJ, in a further effort to accommodate Respondent, convened the hearing on multiple days, giving Respondent extra time to prepare for her own testimony, her cross-examination of Rosendahl-Sweeney, and the People's cross-examination. The PDJ also permitted Respondent to take as many breaks as needed during the hearing.

[34] Respondent did not explain what "TIA" was.

[35] The PDJ had granted the People's pretrial motion to permit this witness's absentee testimony.

she sent to the PDJ; that someone named Christopher Fairbanks—who was also unavailable on the hearing dates—prepared the subpoenas she filed earlier in the case; and that two Mormon elders—whose names she could not remember—came to her house and offered to help her. Respondent argued that she did not give the PDJ any medical documentation to substantiate her claims of numerous disabilities because she had told the PDJ that she was disabled. She said she had medical records documenting her disabilities but acknowledged that she had not submitted them to the PDJ.[36] A woman claiming to be Respondent's in-home aid, Elizabeth Dworak, spoke on the phone and agreed to read to Respondent all of the PDJ's previous orders.[37] The PDJ denied Respondent's oral request for another continuance and proceeded with the People's case, including Respondent's cross-examination of Rosendahl-Sweeney. The PDJ observed, during the cross-examination, that Respondent comported herself with knowledge of the People's charges.

After the People rested, Respondent asked for additional time to prepare her direct testimony and to schedule cataract surgery. The PDJ allowed a brief continuance and set the remainder of the hearing for September 18, 2018.[38] The PDJ also ordered Respondent to appear for that part of the hearing by video conference and to make arrangements for her assistant Dworak—who Respondent attested would be able to help her prepare for and attend the hearing—to also appear in case Respondent needed assistance.[39]

Between September 7 and 10, 2018, Respondent sent the PDJ and the People several emails:

- An email sent on September 7, 2018, at 3:54 p.m., in which she stated: "For what purposes are you doing this? If you are threatening to arrest me, I need counsel immediately. I need an opportunity to present exculpatory evidence and I am disabled. I do not have any help after now until Monday as well."[40]

- Another email sent on September 7, 2018, at 7:02 p.m., in which she claimed to have "other exculpatory information that the court needs to consider. As I am disabled, I ask that you allow me to take the time I need to prove my defense."[41]

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[36] The PDJ acknowledged that he received several letters from Respondent's purported providers but that they were insufficient to establish good cause, as they lacked the detail necessary for the PDJ to determine the nature of Respondent's disability and the need for a continuance.

[37] The PDJ harbors serious doubt that the person claiming to be Dworak was someone other than Respondent herself.

[38] *See* "Order Continuing Remainder of Hearing" (Sept. 7, 2018).

[39] *See* "Order Continuing Remainder of Hearing" (Sept. 7, 2018).

[40] Email from Respondent (Sept. 7, 2018, at 3:54 p.m.).

[41] Email from Respondent (Sept. 7, 2018, at 7:02 p.m.).

- An email sent on September 10, 2018, at 9:00 a.m., in which she stated: "I can't see clearly what you sent. Elizabeth has a broken arm and hasn't been available [] I'm looking into another way to do this."[42]

- A second email sent on September 10, 2018, at 9:11 a.m., in which she said: "I have to wait until Elizabeth comes today or another day for her to help me with this."[43]

- A third email sent on September 10, 2018, at 10:23 a.m., in which Respondent expressed "concern[] that no one here is interested in exculpatory or exonerating facts or materials . . . . I don't think you are interested in what is the truth here due to what Mr. Ikeler has described as limiting factors."[44]

- A fourth email sent on September 10, 2018, at 12:21 a.m., indicating that "Elizabeth has quit her job due to a broken arm and is no longer available to assist me. I have asked the church for assistance, as well as others."[45]

On September 11, 2018, the PDJ issued an order reminding Respondent that all discovery deadlines had passed and that she must show good cause for any additional continuances.[46] The PDJ ordered Respondent to make arrangements in advance of the hearing on September 18 for assistance, and to appear by video conference.[47]

On September 12, 2018, Respondent sent another email, this time stating in part:

> My father was an eye doctor and put hard lenses on me at the age of seven in an attempt to prevent keratoconus, I have drusen syndrome, detaching retinas and most likely onset of glaucoma because my eye pressure has been consistently high.[48]

That same day, the PDJ issued another order, noting that Respondent failed to attach any medical documentation concerning her "disabilities," including her purported Treacher-Collins Syndrome or Drusen Syndrome and how those conditions affected her ability to prepare for or attend the hearing.[49] The PDJ again made note of several inconsistencies between Respondent's statements about her health, once again finding her claims to be less than credible.[50]

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[42] Email from Respondent (Sept. 10, 2018, at 9:00 a.m.).
[43] Email from Respondent (Sept. 10, 2018, at 9:11 a.m.).
[44] Email from Respondent (Sept. 10, 2018, at 10:23 a.m.).
[45] Email from Respondent (Sept. 10, 2018, at 12:21 p.m.).
[46] *See* "Order Considering Respondent's Emails and Directing the Hearing to Proceed" (Sept. 11, 2018).
[47] *See* "Order Considering Respondent's Emails and Directing the Hearing to Proceed" (Sept. 11, 2018).
[48] Email from Respondent (Sept. 12, 2018, at 9:48 a.m.).
[49] *See* "Second Order Considering Respondent's Emails and Directing the Hearing to Proceed" (Sept. 12, 2018).
[50] *See* "Second Order Considering Respondent's Emails and Directing the Hearing to Proceed" (Sept. 12, 2018).

One day before the conclusion of the hearing, Respondent filed a lengthy "Notice of Removal" in the United States District Court for the District of Colorado, seeking to remove this case to the federal district court. Despite Respondent's ostensible inability to participate in any meaningful fashion in this proceeding, the removal motion she filed contained a formal court caption, was twenty-eight pages long, included eight substantial exhibits, and contained legal analysis and a discussion of legal authority.[51]

On September 18, 2018, the PDJ held a status conference on the notice of removal and placed the case in abeyance pending an order from the federal district court.[52] On September 28, 2018, the PDJ removed the case from abeyance after receiving the federal court's notice of dismissal and entry of judgment against Respondent. After some resistance from Respondent, the PDJ set the conclusion of the hearing for October 18, 2018.[53]

On October 15, 2018, Respondent moved again to continue the remainder of the hearing, this time indicating that she was undergoing treatments for a "disability."[54] She attached a letter from Laura Boucher, a physician assistant at Spine West, who stated that she was in the process of treating Respondent and requested that Respondent "be excused from participating in debate and discussions" due to an injection that was administered on October 8, 2018.[55] The PDJ concluded that Respondent again failed to establish good cause to continue the hearing, citing her generic description of her "disability" and her lack of adequate notice of any unforeseen or unexceptional circumstance requiring a continuance.[56] The PDJ also found that Respondent failed to link the therapeutic treatments that she received from Spine West to her purported inability to participate at the upcoming hearing or her ability to attend the hearing with reasonable accommodations, such as participation by telephone.

On October 18, 2018, the PDJ resumed the remainder of the hearing. Ikeler appeared in person, and Respondent appeared by telephone, even though she had been ordered to appear by video conference. After making a brief record concerning her spine injury and corresponding treatment, Respondent declined to provide any testimony because she was not "ready to proceed" or "prepared." Respondent also stated that she was "not ready" to give a closing argument. The PDJ proceeded with the People's final argument and concluded the hearing.

Respondent did not put on any evidence in her own defense either through documents, witness testimony, or her own testimony. Nor did she file a pre-hearing brief.

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[51] Respondent claimed that she did not write this motion and instead had someone assist her. She did not explain why that person was unable to assist her in this matter.

[52] Ikeler appeared for the People, and Respondent attended by telephone.

[53] *See* Emails from Respondent (Oct. 1-3, 2018).

[54] Email from Respondent (Oct. 15, 2018, at 9:07 a.m.).

[55] Email from Respondent (Oct. 15, 2018, at 9:07 a.m.).

[56] *See* "Order Denying Sixth Motion to Continue Hearing" (Oct. 16, 2018).

II. FINDINGS OF FACT[57]

Around May 2016, Janet Rosendahl-Sweeney ("Rosendahl-Sweeney") and her then-husband, George Sweeney ("Sweeney"), met with Respondent to discuss having her prepare a special needs trust for their two adult disabled sons. The couple wanted the trust to include the family home in Littleton and forty acres of land in the San Luis Valley.[58]

Sweeney testified that Respondent told them that she was a paralegal, not a lawyer, and performed "forms-driven services." He understood that Respondent would select the special needs trust paperwork and provide it to the couple. He said that he did not know where to find the correct forms to create the trust. Rosendahl-Sweeney recalled Respondent informing them that she was "well versed" in creating a special needs trust could select the proper forms, "write" up the documents, and "put" the documents "through the court" for them.

During that initial meeting, Respondent gave the Sweeneys a "Waiver, Release, Hold Harmless and Confidentiality Agreement" to sign.[59] The document referred to Respondent as a "paralegal" who would not give "legal advice."[60] The waiver also stated that Respondent's preparation of documents was limited to "administrative[] [assistance] in a forms-related manner."[61] Rosendahl-Sweeney and Sweeney both testified that Respondent required them to sign the waiver before she provided services. The Sweeneys and Respondent signed the waiver on June 7, 2016. Rosendahl-Sweeney stated that she paid Respondent $500.00 to select and prepare the special needs trust documents.

Rosendahl-Sweeney testified that by June 2016 her marriage to Sweeney was "broken." The couple decided to separate. Rosendahl-Sweeney said she hoped that Respondent could help them with their divorce for a low cost.[62] On June 3, the Sweeneys emailed Respondent about the division of the marital property.[63] Rosendahl-Sweeney testified that Respondent asked her to send a list of their marital property and how they wanted to divide it, which Rosendahl-Sweeney did.[64]

On June 12, 2016, Respondent emailed the couple, offering to assist them with their divorce by providing "forms-driven dissolution pleadings."[65] In that email, Respondent claimed that she did not "give legal advice" but opined that it was a "good idea that you

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[57] Where not otherwise noted, these facts are drawn from testimony.

[58] *See* Ex. 2. The parties do not dispute whose email addresses are reflected on the exhibits: kennedygo@aol.com belongs to Rosendahl-Sweeney; media911@gmail.com belongs to Respondent; and gsweeney15759@gmail.com belongs to Sweeney.

[59] Ex. 4.

[60] Ex. 4 at 00065.

[61] Ex. 4 at 00065.

[62] *See* Ex. 11.

[63] *See* Ex. 2.

[64] *See* Ex. 2.

[65] Ex. 7 at 00250.

both agree with the equitable as possible division of marital assets."[66] She also discussed how the couple would divide their marital assets. As an example, she emailed the couple that "I got from Janet that she wants George to keep his pension so long as she keeps the house and she and the boys are living (in trust) . . . ."[67]

On June 17, 2016, Respondent again emailed the couple, inquiring whether they had done their "homework in checking the calculations for child support with respect to [their] 19-year-old who is still in high school and spousal maintenance."[68] She also warned that "Janet is willing to forgo spousal maintenance should cooperation continue, but George may not be able to avoid paying child support for your high school age son."[69] Sweeney testified that he interpreted this email as threatening, and he worried that if he did not cooperate with Respondent and Rosendahl-Sweeney he would "lose everything." According to Rosendahl-Sweeney, Respondent advised her that a court would not allow child support to be waived.

In early July 2016, Sweeney formally filed for divorce and hired an attorney. Rosendahl-Sweeney represented herself, but she testified that Respondent assisted her with preparing and filing pleadings. Rosendahl-Sweeney said that she wanted to use Respondent's assistance because she hoped to get through the divorce "cheaply." She paid Respondent $1,000.00 for her services in navigating the divorce.

On July 8, 2016, Respondent emailed Rosendahl-Sweeney a court form so she could request reasonable accommodations under the ADA.[70] According to Rosendahl-Sweeney, Respondent selected the form.

Also on that day, Respondent and Rosendahl-Sweeney exchanged a number of emails discussing the division of marital assets and their value.[71] According to Rosendahl-Sweeney, Respondent told her how she thought the assets should be divided. Respondent also wanted to ensure that the court had the actual values of all the assets.[72] Rosendahl-Sweeney said that Respondent advised her to draft a narrative about her marriage because it was important for the court to get a picture the relationship and what she and the children were accustomed to. [73] Rosendahl-Sweeney testified that Respondent insisted she had the "legal expertise" to "get her everything she wanted" in the divorce.

On July 10, 2018, Respondent prepared and emailed Rosendahl-Sweeney a draft of a motion for temporary orders ("MTO"), which included the narrative Rosendahl-Sweeney

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[66] Ex. 7 at 00249.
[67] Ex. 7 at 00250.
[68] Ex. 9 at 00251.
[69] Ex. 9 at 00251.
[70] Ex. 17 at 00185.
[71] *See* Ex. 18.
[72] *See* Ex. 18.
[73] Ex. 19.

created at her behest. Respondent asked Rosendahl-Sweeney to edit the draft.[74] Two days later, Respondent sent Rosendahl-Sweeney another version of the MTO, advising her that they needed to "get together the Affidavit from you . . . [and] urgently need you to do the Motion to Waive Fees (in forma paupers [sic]) and financial affidavit to waive your fees."[75]

On July 12 and 13, 2018, Respondent and Rosendahl-Sweeney discussed over email fee waiver forms, financial affidavits, and guardianship forms.[76] Respondent emailed Rosendahl-Sweeney a link to a fee waiver and financial affidavit form, suggesting that she fill out the form to obtain a waiver of her filing fees.[77] Respondent indicated that she would finalize the document once Rosendahl-Sweeney had completed it.[78] In another email, Rosendahl-Sweeney asked Respondent how to fill out the income information, and Respondent instructed her: "Just enter what you get for SSDI in the field for Social Security and I'd add 'SSDI.' You have no income."[79] Respondent also emailed Rosendahl-Sweeney a link to the guardianship forms on the state judicial page and suggested that Rosendahl-Sweeney review two Colorado statutes.[80]

During the dissolution, the court ordered the couple to attend an initial status conference. Rosendahl-Sweeney testified that she could not attend because her son had a medical appointment that was difficult to reschedule.[81] She said that Respondent drafted several versions of a motion to continue the conference.[82]

In July and August 2016, Respondent drafted several editions of the MTO, an affidavit in support of the motion, and request for ADA accommodations, all of which she sent to Rosendahl-Sweeney for review.[83] The final version of the MTO and affidavit were filed with the court on August 16, 2016.[84] Rosendahl-Sweeney testified that Respondent filed the final MTO with the court. According to Rosendahl-Sweeney, she wrote the facts but Respondent made the facts sound "more legal like" and drafted the legal language in the motion and supporting affidavit. As one example, the drafts of the motion referred to Sweeney's "reckless and wanton disregard" and "bad faith," and requested "imputed income" for Sweeney.[85] Rosendahl-Sweeney testified that she did not know what those terms meant and was adamant that those were Respondent's words. She recalled Respondent explaining to her that imputed income that meant she could ask the court for the income Sweeney

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[74] Ex. 20 at 00184.
[75] Ex. 25.
[76] *See* Ex. 29.
[77] Ex. 29.
[78] Ex. 29 at 00191.
[79] Ex. 29 at 00191.
[80] Ex. 30 ("Please review § 15-14-301 through § 15-14-318. C.R.S. (Colorado Revised Statutes) or we can go other[sic] them together.").
[81] *See* Ex. 42.
[82] *See* Ex. 44 ("Janet, Please read the attached and let me know what you may want changed.").
[83] *See* Exs. 31, 51-52, 54.
[84] Ex. 55.
[85] *See* Ex. 51 at 00283-84; Ex. 55 at 00824.

could have made had he not declined several promotions at work. She also said that Respondent advised her to ask for "everything she could get" to keep her and the children "afloat."

Toward the end of July 2016, Sweeney improperly withdrew funds from the marital bank account.[86] Rosendahl-Sweeney asked Respondent what to do. As she recalled, Respondent advised her that Sweeney had violated a court order, discussed Colorado statutes that provided for injunctions, and recommended that she immediately request emergency relief from the court.[87] Respondent then drafted a letter for Rosendahl-Sweeney to send to Sweeney's attorney addressing his improper withdrawals.[88] Respondent also advised Rosendahl-Sweeney via email that a judge could force her to sell the marital residence in order to pay for Sweeney's attorney's fees in the dissolution, suggesting that "it's not only your house as it has his name on it. He may liquidate assets in his name in order to pay your attorney bills."[89]

On August 25, 2016, Rosendahl-Sweeney sent Respondent a narrative she had drafted in which she discussed financial issues that she and her sons were experiencing as a result of Sweeney's withdrawals of marital funds, his failure to pay insurance premiums, and his change in health insurance.[90] Rosendahl-Sweeney testified that Respondent suggested that an emergency motion would be the "best bet" to get Sweeney to change his conduct.

Respondent then emailed Rosendahl-Sweeney several drafts of an affidavit and an emergency motion addressing Sweeney's purported violations.[91] The final version of the emergency motion was filed with the court on September 27, 2016.[92] The motion contained numerous exhibits and asked the court for legal relief, such as compelling Sweeney to return withdrawn funds.[93] Rosendahl-Sweeney said that she provided Respondent with the facts for that motion but that it contained Respondent's "choice of words." She also testified that Respondent suggested adding Rosendahl-Sweeney's sons to the caption as additional parties because they too suffered harm.[94]

Also in September 2016, Rosendahl-Sweeney became concerned about child support and her children's standard of living.[95] She said Respondent advised her that their "standard

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[86] *See* Ex. 47 (email string between Rosendahl-Sweeney and Respondent about Sweeney's withdrawal of funds).
[87] *See* Ex. 47 at 00298.
[88] Ex. 46 ("DRAFT consider the following . . .").
[89] *See* Ex. 48 at 00301.
[90] *See* Ex. 63.
[91] *See* Exs. 61-62 ("Vantage point changed back to first person. Please read in a comfortable chair."); Ex. 66; Ex. 68 ("I had to take a typo out of the caption so I am re-sending this to you. Sorry."); Exs. 70-71 ("Please read and let me know what I missed."); Ex. 72 ("See if this one opens. It has Mark and Mike added to the caption"); Exs. 74-76; Exs. 103-104.
[92] Ex. 106.
[93] Ex. 106.
[94] *See* Ex. 72.
[95] *See* Ex. 86.

of living" should remain the same despite the divorce. According to Rosendahl-Sweeney, Respondent directed her to document any changes since the divorce to put "into court documents," which she did.[96] Respondent then sent Rosendahl-Sweeney a link to the Colorado statutes containing child support standards, a judicial form for a motion to deviate from child support guidelines, and extensive legal research regarding child support, discovery, spousal maintenance, children's disability, and lifetime maintenance.[97]

The couple was ordered to undergo mediation in September 2016.[98] Respondent drafted a letter for Rosendahl-Sweeney to send to Sweeney's attorney, objecting to scheduling mediation without her approval.[99] On September 28, Respondent emailed Rosendahl-Sweeney a link to Colorado's Dispute Resolution Act and additional case law research.[100] That same day, Rosendahl-Sweeney filed a motion to continue mediation, which she said Respondent drafted.[101] On September 29, Respondent emailed Rosendahl-Sweeney another draft of a letter to send to Sweeney's counsel requesting financial disclosures prior to the mediation.[102] During the months of October and November 2016, Respondent emailed Rosendahl-Sweeney several other drafts of letters to send to Sweeney's counsel concerning the mediation and Sweeney's failure to fully disclose his finances.[103] Rosendahl-Sweeney recalled Respondent advising her to "avoid mediation at all costs" and instead to have the magistrate hear the case. She testified that Respondent also counseled her to "drink a bunch of Red Bulls and fake a panic attack to get out of mediation."

Shortly thereafter, Rosendahl-Sweeney said, her relationship with Respondent deteriorated and she terminated her assistance. Rosendahl-Sweeney testified that everything Respondent advised her to do in the dissolution was a "bad idea" because every decision the court made was in Sweeney's favor. She said that after she fired Respondent, Respondent retaliated against her by filing for custody of Rosendahl-Sweeney's children and by falsifying claims against her in the divorce case.

III. UNAUTHORIZED PRACTICE OF LAW CLAIMS

The Colorado Supreme Court, which has exclusive jurisdiction to define the practice of law within this state,[104] restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.[105] Colorado Supreme

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[96] *See* Ex. 86.

[97] Exs. 87-91, 97-99.

[98] *See* Ex. 84.

[99] Ex. 84. Rosendahl-Sweeney testified that she sent all of her correspondence with Sweeney's lawyer to Respondent because Respondent had asked her to be kept in the loop in order to help draft responses to any such communication.

[100] Exs. 113-114 ("Subject: Research re: Mediation with Citations, case law, MUST READ CRITICAL.").

[101] Ex. 107.

[102] Ex. 115.

[103] *See* Exs. 146, 151, 154.

[104] C.R.C.P. 228.

[105] *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

Court case law holds that a layperson engages in the unauthorized practice of law when he or she 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."[106] Colorado Supreme Court case law holds that an unlicensed person also 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."[107]

Here, Respondent exercised legal discretion on Rosendahl-Sweeney's behalf by drafting and preparing several court filings and affidavits for her to file in her dissolution matter, including a motion for temporary orders, a motion to continue the initial status conference, an affidavit in support of the motion for temporary orders and for ADA accommodations, and an affidavit and emergency motion.[108] Respondent authored several drafts of these motions for Rosendahl-Sweeney's review. In those motions, Respondent requested legal relief for Rosendahl-Sweeney. In a few of them, she modified Rosendahl-Sweeney's factual statements to appear more "legal." Respondent also chose several forms for Rosendahl-Sweeney and advised her to fill them out and file them in her dissolution case, including fee waiver and financial affidavit forms.[109] In addition, Respondent monitored Rosendahl-Sweeney's communications with opposing counsel and drafted several responses for her to send to Sweeney's attorney, including an objection to the court-ordered mediation.

On more than one occasion, Respondent sent Rosendahl-Sweeney links to statutes and excerpts of legal authority that she advised were relevant to issues in Rosendahl-Sweeney's dissolution case. She sent Rosendahl-Sweeney extensive legal research concerning child support, discovery, spousal maintenance, adult children's disability benefits, lifetime maintenance, and Colorado's Dispute Resolution Act.

Finally, Respondent advised Rosendahl-Sweeney about her divorce, including how to divide the martial assets, how to seek child support for disabled children, how to ask the court for ADA accommodations, how to request a waiver of filing fees, how to properly disclose her income on the fee waiver form, whether to seek imputed income from

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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.").

[106] *See Denver Bar Ass'n v. Pub. Utils. Cmm'n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); *see also People v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (same).

[107] *Shell*, 148 P.3d at 171.

[108] *See Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111, 1115-16 (Colo. 1988) (enjoining the respondent from the unauthorized practice of law for drafting pleadings filed in court, which contained legal arguments and authorities).

[109] *People v. Cassidy*, 884 P.2d 309, 311 (Colo. 1994) (selecting documents for a customer's specific legal needs is prohibited).

Sweeney, whether to file an emergency motion concerning Sweeney's misconduct, and how to avoid mediation.[110]

Even though Respondent informed the Sweeneys that she was not a lawyer, Rosendahl-Sweeney relied and acted upon Respondent's legal advice by filing documents and pleadings in her divorce that Respondent had drafted.[111] Respondent's actions caused Rosendahl-Sweeney harm, including lost funds that she paid Respondent for those services and the receipt of poor advice resulting in adverse court rulings in the divorce. Respondent therefore has engaged in the unauthorized practice of law in Colorado.

IV. FINE, RESTITUTION, AND COSTS

Turning to the matter of a fine, C.R.C.P. 236(a) provides that if a hearing master finds that a respondent has engaged in the unauthorized practice of law, the hearing master shall recommend that the Colorado Supreme Court impose a fine ranging from $250.00 to $1,000.00 for each incident of the unauthorized practice of law. The People request that the PDJ recommend the minimum fine of $250.00 per incident, but they do not explain this request. In assessing fines for the unauthorized practice of law, the Colorado Supreme Court previously has examined whether a respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.[112] In this case, there is no evidence of any malice or bad faith, but Respondent engaged in numerous instances of unauthorized activity, including extensive drafting of legal documents and giving of legal advice. Accordingly, the PDJ recommends that Respondent be fined $500.00 for engaging in the unauthorized practice of law.

The People also request an award of restitution to Rosendahl-Sweeney. The People's request is supported by Rosendahl-Sweeney's testimony that she paid Respondent $1,000.00 for her services. Because the Colorado Supreme Court has deemed it appropriate to award restitution of any fees received for the unauthorized practice of law,[113] the PDJ finds that restitution is warranted here.

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[110] *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010) (finding that nonattorneys are prohibited from undertaking activities, such as drafting documents and pleadings and interpreting and giving advice with respect to the law, that require the exercise of legal discretion); *Shell*, 148 P.3d at 170 (finding that a lay advocate engaged in the unauthorized practice of law by selecting and preparing discovery requests and pleadings to be filed and served in two dependency and neglect cases).

[111] *See 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 thereby engaged in the unauthorized practice of law); *People ex rel. Attorney Gen. v. Woodall*, 128 Colo. 563, 563-64, 265 P.2d 232, 233 (1954) (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).

[112] *Adams*, 243 P.3d at 267-68.

[113] *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering a nonlawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

Finally, on October 26, 2018, the People filed "Petitioner's Request to File Statement of Costs Late" accompanied by a statement of costs, asking the PDJ to accept their statement one day late, since they had miscalculated the due date. Respondent objects to the untimely filing, claiming that it was late and that she never engaged in the unauthorized practice of law.[114] Finding no prejudice to Respondent, the PDJ **GRANTS** the People's request. In their statement, the People ask that Respondent be ordered to pay $224.00 in costs to cover the People's administrative fee. Relying on C.R.C.P. 237(a), the PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess $224.00 in costs against Respondent.

V. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondent engaged in the unauthorized practice of law and **ENJOIN** Respondent from the unauthorized practice of law. The PDJ also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay **RESTITUTION** of $1,000.00 to Janet Rosendahl-Sweeney; to pay a **FINE** of $500.00; and to pay **COSTS** of $224.00.

Any party may file objections to this report with the Colorado Supreme Court within twenty-eight days of today's date or as otherwise ordered by the Colorado Supreme Court.[115]

DATED THIS 6th DAY OF NOVEMBER, 2018.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

Kim E. Ikeler Office of Attorney Regulation Counsel	Via Email k.ikeler@csc.state.co.us
Susan Renee Zebelman Vigoda Respondent	Via Email media911@gmail.com
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery

[114] Email from Respondent (Oct. 29, 2018, at 11:10 a.m.).
[115] C.R.C.P. 236(b).