Colorado Supreme Court 101 West Colfax Avenue, Suite 800 Denver, CO 80202	RECEIVED NOV 30 2012 REGULATION COUNSEL
Original Proceeding in Contempt, 10UPL080	
Petitioner: The People of the State of Colorado, **v.** **Respondent:** Gregory Albright.	Supreme Court Case No: 2011SA153
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 finding the Respondent, GREGORY ALBRIGHT guilty of contempt of the January 29, 2010 Order of Court.

IT IS FURTHER ORDERED that the Respondent is assessed a fine in the amount of $2000.00.

BY THE COURT, NOVEMBER 30, 2012.

Case Number: 2011SA153
Caption: People v Albright, Gregory

CERTIFICATE OF SERVICE

Copies mailed via the State's Mail Services Division on November 30, 2012. HCK

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SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN CONTEMPT BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	RECEIVED OCT 2 2 2012 REGULATION COUNSEL
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** GREGORY D. ALBRIGHT	Case Number: **11SA153**
REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 239(a)	

This matter is before the Presiding Disciplinary Judge ("PDJ") on an "Order Appointing Hearing Master" issued by the Colorado Supreme Court ("Supreme Court") on September 9, 2011. In its order, the Supreme Court referred this case to the PDJ "to prepare a report setting forth findings of fact, conclusions of law, and recommendations."[1]

I. SUMMARY

The Supreme Court enjoined Gregory D. Albright ("Respondent") from the unauthorized practice of law on January 29, 2010. Later that year, Respondent—who is not a licensed lawyer—helped a prisoner draft several motions, including a petition seeking a habeas corpus evidentiary hearing, a response to a motion to dismiss, a motion for reconsideration, and two notices of adjudication. The PDJ recommends that the Supreme Court sanction Respondent by imposing punitive contempt pursuant to C.R.C.P. 107(d)(1).

II. BACKGROUND

The matter currently pending before the PDJ arises out of a petition for injunction that the Office of Attorney Regulation Counsel ("the People") filed against Respondent nearly three years ago, alleging that he had engaged in five instances of the unauthorized practice of law.[2] The Supreme Court issued an order on December 9, 2009, directing Respondent to answer and show cause within twenty days why he should not be enjoined from the practice of law.

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[1] Although the Supreme Court's order was issued pursuant to C.R.C.P. 234(f) and 236(a), the PDJ also undertakes this appointment pursuant to C.R.C.P. 238(d) and 239(a).

[2] That matter was captioned *People v. Gregory Albright, d/b/a Albright Law and The Albright Law Firm*, case number 09SA366.

The order was sent by certified mail to Respondent at two of his last known addresses, but he did not timely claim the letters, nor did he timely respond to the order. Accordingly, the Supreme Court enjoined him from the unauthorized practice of law in an order dated January 29, 2010.[3] In two very belated motions filed on April 28, 2010, and June 15, 2010, Respondent requested a hearing regarding the People's allegations.[4] The Supreme Court denied those requests.

In the case at hand, the People filed a petition for contempt citation in the Supreme Court on May 23, 2011, alleging that Respondent engaged in the unauthorized practice of law in violation of the Supreme Court's January 29, 2010, order of injunction. Respondent responded on August 26, 2011. The extensive procedural history in this matter includes several orders directing Respondent to file an answer consistent with the requirements of C.R.C.P. 8; a continuance of the contempt hearing set for May 14-16, 2012, to August 15, 2012; an order denying the People's request that the PDJ deem the factual allegations of the petition admitted; and an order denying Respondent's motion to dismiss on grounds relating to subject matter jurisdiction. Further details regarding the procedural history can be gleaned from the PDJ's previous orders in this matter.[5]

On August 15, 2012, the contempt hearing took place at Denver District Court, in order to permit Respondent—an inmate in the Department of Corrections—to appear in person. The People called David Andrew Herr ("Herr")—also an inmate in the Department of Corrections, and the recipient of Respondent's alleged legal advice. Herr invoked his Fifth Amendment right to remain silent in response to each of the People's questions. In reply to a query by the PDJ, Herr opined that the contempt proceeding was an "abhorrent" "witchhunt," that the People were targeting Respondent for merely trying to help people, and that the proceeding was interfering with Herr's own well-being and rehabilitation.

Although the PDJ had subpoenaed Friedrick C. Haines, an assistant attorney general, at Respondent's request, Respondent decided at the start of

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[3] In the same order, the Supreme Court referred the matter to the PDJ for "findings and recommendations." The PDJ's report of March 31, 2010, recommended that the Supreme Court impose a fine of $1,250.00 and costs in the amount of $91.00. The Supreme Court accepted that report on May 21, 2010.

[4] In those motions, Respondent claimed he did not intend to violate any law and argued he was exercising his First Amendment rights, but he did not explain why he neglected to timely respond to the show cause order.

[5] The procedural history is largely encapsulated in the following orders issued by the PDJ: a December 7, 2011, "Order Denying Respondent's Motion for Access to Law Library and Rescheduling At-Issue Conference"; a March 8, 2012, "Order Continuing Hearing Date and Pre-Hearing Deadlines"; an April 9, 2012, "Order Denying Petitioner's Request for Findings and Denying Respondent's Motion to Dismiss"; a July 26, 2012, "Order Re: Pre-Hearing Conference"; and an August 3, 2012, "Order Re: In Camera Review."

the hearing not to call him to testify. Respondent also elected not to testify on his own behalf, although he did present oral argument. The PDJ heard brief testimony from Elsie Sharpley and admitted the People's exhibits 1-2, 28-29, 41, 44-45, and 47-48.[6]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Findings

As noted above, the Supreme Court entered an order enjoining Respondent from the practice of law on January 29, 2010.[7] Elsie Sharpley, a process server, served the order upon Respondent on April 9, 2010.[8] Respondent does not dispute that he was served with the order, but he asserts that the Supreme Court issued the order without affording him due process.

The People's allegations regarding contempt relate to Respondent's association with Herr from October to December 2010. In 2010, Respondent was on parole from a sentence in the Department of Corrections for escape, forgery, and assault.[9] However, he was in the custody of the Adams County Detention Facility ("ACDF") during part of that year. As relevant here, he was released on bond from ACDF in the summer of 2010, confined again on November 5, 2010, released once again on bond on November 8, 2010, and jailed once more on December 15, 2010.[10]

Herr had been jailed as a result of charges filed in Adams County District Court on March 17, 2010, alleging he had engaged in criminal attempt to commit murder in the second degree, assault in the first degree, vehicular eluding, and child abuse.[11] Herr soon began to question the quality of his representation by the Office of the Colorado State Public Defender. He began to file a series of pro se motions in Adams County District Court, the first of which was an unsuccessful motion alleging ineffective assistance of counsel filed in August 2010.[12] On September 20, 2010, Herr filed a pro se petition for

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[6] Exhibit 47 is a certified copy of the trial court record in *People v. Herr*, case number 10CR752, which the Colorado Court of Appeals provided to the People. In reviewing this document, the PDJ discovered that it included a confidential minute order entered by the Adams County District Court, despite the district court's notation that the order should remain sealed. After the PDJ contacted the court of appeals about this issue, the court of appeals sealed its own copy of the minute order in its file. The PDJ likewise will seal page 168 of exhibit 47 in the PDJ's file and will not consider that document in making this report.

[7] Ex. 1.

[8] The PDJ admitted the return of service at the contempt hearing, with no objection by Respondent, as exhibit 2. In addition, Elsie Sharpley testified at the contempt hearing that she served the Supreme Court's order upon Respondent on April 9, 2010.

[9] Ex. 44 at 1-2.

[10] Ex. 45 at 0158-69.

[11] Ex. 47 at 1-3. Additional charges were later filed against Herr. Ex. 47 at 7-9, 11-12.

[12] Ex. 47 at 26.

habeas corpus relief against the State of Colorado and Adams County, among other entities, asserting that a parole hold had been issued in violation of his civil liberties.[13]

The first direct evidence of Respondent's legal services for Herr appears in a petition seeking a habeas corpus evidentiary hearing, filed on October 29, 2010.[14] The petition opens: "Now comes the petitioner David Andrew Herr, pro-se as well as in association with Lay-Advocate, Gregory D. Albright . . . ."[15] The petition cites C.R.S. section 13-45-103 and several Colorado cases in arguing that an evidentiary hearing was required on his petition within five days and that a determination on the petition was to be based on the hearing.[16]

The attorney general moved to dismiss Herr's petition,[17] and the court granted the motion on November 9, 2010, after Herr neglected to respond by that date.[18] Apparently unaware of the court's ruling, Herr submitted a motion for expansion of time accompanied by his response the next day.[19] The penultimate page of the response includes "CLOSING COMMENTARY, By Gregory Dean Albright, Lay Advocate/Legal Consultant," which reads:

> It is the opinion of this advocate that the Madison ruling is contrary to the intent of legislation and all of the prior ruling established by the proceeding State Supreme Courts. All this detention does is provide the prosecution with leverage and advantage to extort a plea agreement even over the presumption of innocents and in even when the innocence is actual.[20]

A "Memorandum of Law" follows, which cites several cases regarding the remedy of habeas corpus in the context of parole, the length of time a parolee can be kept in jail, and the presumption of innocence for pretrial detainees.[21]

On November 17, 2010, Herr filed a motion asking the court to reconsider its decision to dismiss his petition for habeas corpus.[22] Herr argues that the court unfairly dismissed his petition based on his one-day delay in filing his response.[23] He further asserts that he was statutorily entitled to an

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[13] Ex. 48 at 2.
[14] Ex. 48 at 30.
[15] Ex. 48 at 30.
[16] Ex. 48 at 31.
[17] Ex. 48 at 33.
[18] Ex. 48 at 46-47, 50.
[19] Ex. 48 at 51, 53.
[20] Ex. 48 at 57.
[21] Ex. 48 at 57-58.
[22] Ex. 48 at 62. Three days prior to this filing, Respondent had visited Herr for thirty minutes in the ACDF. Ex. 41 at 0010. Respondent paid Herr a second visit on November 28, 2012, but this visit lasted just thirteen seconds. Ex. 41 at 0011.
[23] Ex. 48 at 62-63.

evidentiary hearing and he offers a contemporaneous objection to the dismissal, citing case law regarding the contemporaneous objection rule.[24] Below Herr's signature on the motion appears the following: "In the interest of justice and ordered liberty, this document was prepared by *Lay Advocate Gregory D. Albright.*"[25] Notwithstanding Herr's motion, the court reaffirmed its dismissal of his petition.[26]

Meanwhile, Herr filed on November 10, 2010, a "notice of adjudication" and "letter of demand," seeking "relief and compensation," including compensatory, punitive, and constitutional damages, from his individual public defender and from the Office of the Colorado State Public Defender.[27] Herr contends that his lawyer engaged in deliberate misrepresentation and malpractice and that she provided "ineffective and damaging" representation by insufficiently investigating his case, inadequately consulting with him, and misinforming him about his rights under the Uniform Mandatory Disposition of Detainers Act.[28] According to Herr, the public defender's ineffective representation violated articles 5, 6, and 14 of the U.S. Constitution, as well as 432 U.S.C. § 1983.[29]

Respondent's name appears in several places on the notice of adjudication. At the top is an address block that reads in part:

> The Albright Law Consortium
> Albright Law – Advocacy Division
> Gregory D. Albright (*CEO – Lay-Advocate/Legal Consultant*)

The final page of the notice contains a "Commentary by Gregory D. Albright, Lay – Advocate U.S. Citizen," asserting his First Amendment right to seek political and social change for those harmed by public defender representation and claiming that such representation "is a stain upon the very soul of our nation's judicial system and our constitution."[30]

Herr filed a second, nearly identical notice of adjudication on November 16, 2010.[31] He also filed a "Stipulation of Self-Representation" and a

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[24] Ex. 48 at 63.
[25] Ex. 48 at 64. Also on November 17, 2010, Herr filed a "Notification of Review Pursuant to C.A.R. 21 Original Jurisdiction of the Colorado Supreme Court," which refers again to Herr's "association with Lay-Advocate, Gregory D. Albright." Ex. 48 at 66.
[26] Ex. 28 at 73.
[27] Ex. 29 at 1-2.
[28] Ex. 29 at 1-2.
[29] Ex. 29 at 2.
[30] Ex. 29 at 3. The motion also bears Respondent's signature. Ex. 29 at 2-3.
[31] Ex. 28.

"Stipulation for the Record," both dated December 9, 2010, in which Herr notes his "association with Lay-Advocate, Gregory D. Albright."[32]

On December 10, 2010, the district court entered a minute order indicating that it would "not accept mtns referred [sic] to Gregory Albright as advocate."[33] The following summer, Herr entered a guilty plea to assault in the first degree—threatening a peace officer with a weapon—and vehicular eluding.[34] He received concurrent sentences of fifteen years and three years in the Department of Corrections.[35]

Although Respondent did not testify at the contempt proceeding, he offered extensive oral argument, during which he neither directly admitted nor denied that he authored the motions and filings discussed above. Tellingly, however, he read into the record the "Commentary by Gregory D. Albright, Lay – Advocate U.S. Citizen" that appears in the notices of adjudication filed by Herr on November 10 and 16, 2010.[36]

Legal Standards Governing Contempt

The 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 C.R.C.P. 238-239. As pertinent here, the 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."[37] 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.[38]

In order for the 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."[39] The People must prove these elements beyond a reasonable doubt.[40]

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[32] Ex. 47 at 97, 99.
[33] Ex. 47 at 171. Subsequently, the court granted the public defender's request to withdraw as counsel, and alternate defense counsel entered an appearance for Herr. Ex. 47 at 13, 173.
[34] Ex. 47 at 158.
[35] Ex. 47 at 158.
[36] Exs. 28-29.
[37] 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).
[38] C.R.C.P. 107(a)(2) & (3).
[39] *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (quotation omitted).
[40] C.R.C.P. 107(d)(1).

As an initial matter, the identity of a respondent as the perpetrator of the alleged contempt must be proved beyond a reasonable doubt in a punitive contempt proceeding.[41] The PDJ concludes that circumstantial evidence demonstrates beyond a reasonable doubt that it was Respondent who drafted (at least in part) and signed the motions at issue in this matter. Although no witness testimony or other evidence directly identified Respondent as the "Gregory D. Albright" who signed Herr's motions, at the contempt hearing Respondent effectively adopted the "'Commentary by Gregory D. Albright, Lay – Advocate U.S. Citizen" that appears in Herr's two notices of adjudication. That commentary, in turn, bears a sufficiently strong resemblance to the wording of the other motions at issue here to convince the PDJ that Respondent is the Gregory D. Albright in question.

Turning to the four elements of punitive contempt, Respondent does not deny that he knew of the order of injunction or suggest that he was unable comply with it. His primary defenses are that the People have not established the first and fourth elements of punitive contempt.

Respondent first argues that the Supreme Court's order enjoining him from the practice of law was not a lawful order. Earlier in this proceeding, he asserted that the order denied him due process of law because he responded to the Supreme Court's order to show cause and requested a hearing, but the hearing was denied. He did not expand on his due process argument at the contempt hearing, except to say the order was an "act of retaliation."

The Supreme Court issued its order of injunction pursuant to C.R.C.P. 234, which states in part that "[s]ervice of process shall be sufficient when made either personally upon the respondent or by certified mail sent to the respondent's last known address." Here, the order to show cause was sent by certified mail to Respondent's last known addresses, in compliance with C.R.C.P. 234. Respondent did not respond to the order within the twenty-day timeframe allotted—or indeed, until nearly four months after that deadline—and the Supreme Court therefore properly entered its injunction. As such, the PDJ rejects Respondent's contention that the order of injunction was unlawful.

Respondent next denies having willfully refused to comply with the Supreme Court's order by engaging in the unauthorized practice of law. The applicable standards in Supreme Court case law provide that "an unlicensed person engages in the unauthorized practice of law by offering legal advice

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[41] *See People v. Watkins*, 191 Colo. 440, 443, 553 P.2d 819, 821 (1976) (citation omitted). The PDJ interprets the "right to require proof of the charge beyond a reasonable doubt," which appears in C.R.C.P. 107(d)(1), to encompass the requirement that the prosecution prove the respondent's identity beyond a reasonable doubt. The PDJ recognizes that although "punitive contempt" is sometimes referred to as "criminal contempt," "conduct that is found to be offensive to the authority and dignity of the court pursuant to C.R.C.P. 107 is not criminal conduct." *See Eichhorn v. Kelley*, 111 P.3d 544, 547 (Colo. App. 2004).

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."[42] A layperson who 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" engages in the unauthorized practice of law.[43]

The evidence here unmistakably shows that Respondent willfully "draft[ed] legal pleadings for another's use in a judicial proceeding" and acted in a representative capacity by asserting Herr's legal rights. Respondent's argument that it is not practicing law to "type something for someone" and "add a comment" is unavailing. Although a layperson does not engage in the unauthorized practice of law merely by acting as a scrivener,[44] the preparation of legal documents—especially documents that reflect research and analysis of a patently legal nature, as here—amounts to the practice of law.[45] That Respondent did not hold himself out as a licensed attorney does not dictate a different conclusion.[46]

The PDJ has already considered and rejected Respondent's contention that—because he had been released from jail on bond when he assisted Herr—

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[42] *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).

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

[44] *Pub. Utils. Cmm'n*, 154 Colo. at 281, 391 P.2d at 472; *see also Unauthorized Practice of Law Comm. v. Grimes*, 759 P.2d 1, 4 (Colo. 1988) (ordering a layperson who had been enjoined from the practice of law to "act solely and strictly as a scrivener" when asked by customers to fill in blank forms); *Franklin v. Chavis*, 640 S.E.2d 873, 876 (S.C. 2007) ("Even the preparation of standard forms that require no creative drafting may constitute the practice of law if one acts as more than a mere scrivener.").

[45] *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").

[46] *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); *Columbus Bar Ass'n v. Am. Family Prepaid Legal Corp.*, 916 N.E.2d 784, 797 (Ohio 2009) (deciding that disclosure of non-attorney status is no defense to an unauthorized practice of law claim); *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 therefore engaged in the unauthorized practice of law).

he was authorized to practice law as a "jailhouse lawyer."[47] In his motion to dismiss, Respondent argued that being released from jail on bond is equivalent to being in custody and that an inmate's relationship with jailhouse counsel lasts permanently. In *Johnson v. Avery*, the United States Supreme Court ruled that unless a state provides a reasonable form of assistance to illiterate inmates in filing petitions for post-conviction relief, such as the services of public defenders, the state cannot bar other prisoners from helping such inmates.[48] Respondent does not cite—nor can the PDJ identify—any legal support for Respondent's arguments that the relationship between an inmate and a jailhouse lawyer is permanent and that a former inmate released on bond is permitted to provide legal advice to incarcerated persons. Rather, case law indicates that a prisoner's right to jailhouse counsel encompasses, at most, the right to receive legal counsel from another *inmate*.[49] Here, unlike the situation in *Johnson*, Herr had the benefit of a public defender, Respondent himself characterized Herr as "very eloquent," and Respondent was not incarcerated when he assisted Herr in drafting the motions in question.[50]

Finally, the PDJ is somewhat sympathetic to Respondent's underlying argument that, as a citizen, a man of God, and a man of conscience, he has an obligation to help protect the rights of prisoners and to defend against injustice. Respondent's impassioned commentary at the contempt hearing reflects laudable concerns. Nevertheless, the PDJ cannot exempt a contemnor from the force of law based on the contemnor's arguably good intentions. The evidence demonstrates beyond a reasonable doubt that Respondent offended the dignity and authority of the Supreme Court by violating its order of injunction, and the PDJ must find Respondent in contempt.

Fine and Costs

C.R.C.P. 239(a) provides that, if the PDJ makes a finding of contempt but does not recommend imprisonment, then the PDJ must recommend that the Supreme Court impose a fine between $2,000.00 and $5,000.00 for each incident of contempt. The People stipulate that Respondent engaged in one

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[47] *See* Ord. Denying Petitioner's Request for Findings & Denying Respondent's M. to Dismiss (April 9, 2012).

[48] 393 U.S. 483, 489-90 (1969).

[49] *See, e.g., Bourdon v. Loughren*, 386 F.3d 88, 97 n.12 (2d Cir. 2004) ("'Jailhouse lawyers' . . . are *prisoners* who assist other prisoners on applications for the writ of habeas corpus and other legal matters.") (*citing Bounds v. Smith*, 430 U.S. 817, 823 (1977)) (emphasis added).

[50] As noted above, Respondent was released on bond between June 30 and November 5, 2010; in jail from November 5 to 8, 2010; and again released on bond from November 8 to December 15, 2010. Ex. 45 at 0158-69. All of the filings in question were submitted when Respondent was not in custody: Herr's petition seeking a habeas corpus hearing was filed on October 29, 2010; his response to the motion to dismiss was filed on November 10, 2010; his motion for reconsideration and his notification of C.A.R. 21 review were filed on November 17, 2010; his two notices of adjudication were filed on November 10 and 16, 2010, respectively; and his two stipulations were filed on December 9, 2010.

incident of contempt for purposes of a fine, and they suggest that the maximum fine of $5,000.00 is appropriate in light of the "brazen" nature of Respondent's conduct.

In *People v. Shell*, the Supreme Court imposed a total fine of $6,000.00 for the respondent's two instances of the unauthorized practice of law, which involved extensive legal advocacy on behalf of parties in dependency and neglect proceedings.[51] As another example, in the *In re Boyer* decision, the Supreme Court sanctioned an attorney who practiced law while his license was suspended by imposing a fine of $24,997.50—three times the amount of fees he had collected from his unauthorized practice of law.[52] In imposing that fine, the Supreme Court noted that the respondent had not previously been held in contempt and that he had presented evidence of a medical problem that mitigated his misconduct.[53]

Under the circumstances here, where there is no evidence that Respondent derived a profit from his practice of law and he had not been subject to more than one injunction against practicing law, the PDJ believes the minimum fine of $2,000.00 for Respondent's contemptuous conduct is appropriate.

The People filed a statement of costs on August 16, 2012, requesting an award of $647.75. These costs are comprised of a $45.00 service of process charge, a $236.75 "no-show" court reporter charge for Respondent's deposition scheduled for May 8, 2012, a $275.00 court reporter charge for the contempt hearing, and a $91.00 administrative fee.

The 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."[54] 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 Supreme Court shall "prescribe the punishment therefor, including the assessment of costs, expenses and reasonable attorney's fees." Given that C.R.C.P. 239(g) was in effect when the Supreme Court issued *Shell* and that the Supreme Court presumably was aware of that rule, the PDJ follows the Supreme Court's apparent determination that costs may not be imposed in a punitive contempt case involving the unauthorized practice of law.

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[51] 148 P.3d at 178.
[52] 988 P.2d 625, 626 (Colo. 1999).
[53] *Id.* at 628.
[54] 148 P.3d at 178.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Supreme Court **FIND** Respondent in contempt of court. The PDJ further **RECOMMENDS** that the Supreme Court order Respondent to pay a **FINE** of $2,000.00.[55]

DATED THIS 22nd DAY OF OCTOBER, 2012.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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Gregory Albright, #95774 — Via First-Class Mail
Arkansas Valley Correctional Facility
P.O. Box 1000
Crowley, CO 81034

Christopher T. Ryan — Via Hand Delivery
Colorado Supreme Court

[55] Either party may file objections to the PDJ's report with the Supreme Court within twenty-eight days, as set forth in C.R.C.P. 239.