SUPREME COURT, STATE OF COLORADO TWO EAST 14TH AVENUE DENVER, COLORADO 80203 ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW	CASE NO. 01SA155

Petitioner:

THE PEOPLE OF THE STATE OF COLORADO,

vs.

Respondent:

DAVID HASKETT.

ORDER OF COURT

Upon consideration of the Report Pursuant to C.R.C.P. 53(e) Re: Findings of Fact, Conclusions of Law and Recommendation for Final Disposition issued by the Presiding Disciplinary Judge, together with the file herein, and now being sufficiently advised in the premises,

IT IS ORDERED that DAVID HASKETT IS ENJOINED FROM THE UNAUTHORIZED PRACTICE OF LAW.

IT IS FURTHER ORDERED that David Haskett pay the costs and expenses of this action in the amount of $290.75 within 60 days of the date of this order.

BY THE COURT, MAY 15, 2002.

cc:
Hon. Roger Keithley
Presiding Disciplinary Judge

James Coyle
Assistant Regulation Counsel

David Haskett
P.O. Box 820155
Memphis, TN 38182-0155

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202	Case Number: **01SA155**
Petitioner: THE PEOPLE OF THE STATE OF COLORADO, **Respondent:** DAVID HASKETT.	

REPORT PURSUANT TO C.R.C.P. 53(e) RE: FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR FINAL DISPOSITION

By Order dated November 27, 2001, the Colorado Supreme Court remanded this matter to the Presiding Disciplinary Judge ("PDJ") to determine questions of fact and to make recommendations to the Supreme Court on whether the respondent should be enjoined from the unauthorized practice of law and for recommendations concerning costs of these proceedings, refunds, and restitution for losses incurred by clients and third parties.

I. BACKGROUND

The Office of Attorney Regulation Counsel ("Petitioner") filed a Petition for Injunction ("Petition") with the Supreme Court on May 15, 2001 under authority granted to that office by C.R.C.P. 234(a). The Petition requested that the Supreme Court enjoin David Haskett, ("Haskett") from engaging in the unauthorized practice of law, and requested that the Court assess the costs and expenses of these proceedings.

On May 15, 2001, the Supreme Court issued an Order to Show Cause directing Haskett to show cause why he should not be held in contempt of court for engaging in the unauthorized practice of law. Haskett filed an Answer to the Order to Show Cause on October 26, 2001, admitting in part and denying in part the allegations set forth in the Petition.

The PDJ scheduled an evidentiary hearing for January 25, 2002. David Haskett appeared *pro se*, and James C. Coyle of the Office of Attorney Regulation Counsel appeared on behalf of petitioner. Petitioner's exhibits 1, 2,

3 and 6 were offered into evidence. James W. Kin, Fred A. Gabler, and Gregory O'Boyle testified on behalf of petitioner. Haskett testified on his own behalf.[1]

II. FINDINGS OF FACT

David Haskett is not licensed to practice law in the State of Colorado. Haskett represented the interests of Bradford Kelly Neal ("Neal") in a quiet title action, *Neal v. The Town of Palmer Lake, et al.,* Case No. 00CV1375, in El Paso County District Court, Colorado. Haskett acted under a power of attorney pertaining to real estate which empowered Haskett to act on Neal's behalf regarding the sale or conveyance of real estate. The power of attorney did not empower Haskett to act as Neal's representative in litigation. At no time did Haskett represent to others that he was licensed to practice law in the State of Colorado. In the course of the proceeding, Haskett took the following actions on Neal's behalf:

- Drafted the Verified Complaint for Quiet Title Under Rule 105 C.R.C.P. and assembled the factual basis for the allegations therein;
- Drafted two *lis pendens* on behalf of Neal and signed for Neal as his attorney-in-fact;
- Filed the *lis pendens* on the subject property;
- Drafted the legal description contained in the Verified Complaint for Quiet Title Under Rule 105 C.R.C.P.;
- Instructed opposing counsel that he was acting as Neal's agent through a power of attorney, and required that they communicate with him as Neal's agent;
- Engaged in discussions with opposing counsel regarding pre-trial procedures, discovery, and preliminary settlement negotiations;
- Attended a mediation as Neal's representative;
- Attended a case management conference after receiving the court's permission to assist Neal for purposes of the case management conference;
- Assisted in settling the case on Neal's behalf.

III. CONCLUSIONS OF LAW

"The Colorado Supreme Court, as part of its inherent and plenary powers, has exclusive jurisdiction over attorneys and the authority to regulate, govern, and supervise the practice of law in Colorado to protect the public." *People v. Varallo,* 913 P.2d 1, 3 (Colo. 1996), *citing Colorado Supreme Court Grievance Comm. v. District Court*, 850 P.2d 150, 152 (Colo.1993). This authority includes the power to prohibit the unauthorized practice of law and

[1] Prior to the commencement of the hearing, Haskett orally moved that the PDJ recuse himself from the proceedings. The PDJ denied the oral motion, finding that the grounds relied upon by Haskett did not rise to the level necessitating recusal under C.R.C.P. 97.

to promulgate rules in furtherance of that end. *Id.* The determination of what acts do or do not constitute the practice of law is a judicial function. *Unauthorized Practice of Law Committee of the Supreme Court v. Prog*, 761 P.2d 1111, 1115 (Colo. 1998); C.R.C.P. 228. The purpose of the requirement that a person must obtain a license from [the Supreme Court] is to protect the public from unqualified persons who provide incompetent legal services. *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982).

Haskett is not licensed to practice law in the State of Colorado. Both in his Answer and in the course of the hearing, Haskett for the most part admitted that he took the actions set forth above, but denied that he engaged in the practice of law because he did not hold himself out as an attorney. Rather, he informed opposing counsel and third parties that he was Neal's appointed agent and/or attorney-in-fact acting under a power of attorney.

To make a finding that a non-attorney engaged in the unauthorized practice of law, it is not necessary that the person hold himself or herself out as a lawyer licensed to practice law. *See Cincinnati Bar Ass'n v. Telford*, 707 N.E.2d 462, 464 (Ohio 1999)(holding that non-lawyer's statements in his solicitation letters that he was not an attorney and was not giving legal advice and the powers of attorney executed by his clients insulated non-attorney from a finding that he engaged in the unauthorized practice of law). Moreover, Haskett's possession of a power of attorney authorizing him to act on Neal's behalf in the sale of real estate does not protect Haskett from a finding of unauthorized practice of law. Colorado has defined a person who engages in the practice of law as one who "acts in a representative capacity in practicing, enforcing, or defending the legal rights and duties of another." *Watt, Tieder, Killian & Hoffar v. U.S. Fidelity & Guar. Co.,* 847 P.2d 170, 173 (Colo. App. 1992), *citing Denver Bar Ass'n v. Public Utilities Commission,* 154 Colo. 273, 391 P.2d 467 (1964). "[T]he basic and initial question must always be whether the individual's appearance is in a representative capacity to protect, enforce, or defend the rights or duties of someone else." *Watt,* 847 P.2d at 172. This analysis is consistent with other jurisdictions. In *Office of Disciplinary Counsel v. Coleman,* 274 N.E. 2d 402, 404 (Ohio 2000), the Ohio Supreme Court analyzed the unauthorized practice of law with regard to the use of a power of attorney as follows:

> Persons holding powers of attorney have historically not been considered attorneys who can appear in the courts. When a principal through the execution of a "power of attorney" designates another to transact some business that could have been transacted by the principal, he appoints an agent to act for him as an "attorney in fact" or "private attorney." (citations omitted). An "attorney in fact" has been consistently distinguished from an "attorney at law" or "public attorney" since at least 1402 when

> certain attorneys in England were examined by Justices and "their names be entered on the roll" of those permitted to practice in the courts. Oxford English Dictionary 772 (2nd Ed. 1989). Thus, a person holding a power of attorney, but whose name is not entered on the roll, is an attorney in fact, but not an attorney at law permitted to practice in the courts.

Id. 274 N.E. 2d at 404.

Haskett represented Neal's interests in *Neal v. The Town of Palmer Lake, et al.,* by drafting the complaint, drafting the legal description of the property, discussing the case with opposing counsel, addressing discovery issues, and representing Neal's interest in settlement negotiations. Haskett took these actions intending to protect, enforce or defend Neal's rights. Such actions constitute the practice of law. Haskett directed and managed the lawsuit on behalf of Neal. *See Denver Bar Ass'n,* 391 P.2d at 471 (generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another is engaged in the practice of law); *People ex rel. Atty. Gen. v. Wicks*, 74 P.2d 665, 101 Colo. 397 (1937)(holding that one who commits overt acts of appearing in a court of record to conduct legal proceedings for another is engaged in the practice of law). *See also Fravel v. Stark County Board of Revision et al.,* 728 N.E. 2d 393, 395 (Ohio 2000)(holding that a non-attorney operating under a power of attorney engages in the unauthorized practice of law when he prepares and files a complaint with a board of revision on behalf of a taxpayer); *Telford,* 707 N.E. 2d at 463 (a non-attorney who attempts to settle a pending lawsuit on behalf of one of the litigants is engaged in the unauthorized practice of law); *Kohlman v. W. Pennsylvania Hosp*, 652 A.2d 849, 852 (1994)(holding that the in-court representation of another -- a paradigmatic function of the attorney-at-law -- amounts to the "practice of law", *citing* 7 Am. Jur. 2d Attorneys at Law § 1 (1980)(stating that "practice of law . . . embraces . . . the management of actions and proceedings on behalf of clients before judges and courts")).

IV. AWARD OF COSTS

Petitioner submitted a Statement of Costs on January 28, 2002, respondent filed an Objection thereto and petitioner filed a Reply on February 25, 2002. Petitioner requests that respondent be assessed costs in the amount of $640.75. Respondent objects to the cost of investigative services, and the witness expense for Mr. O'Boyle.

C.R.C.P. 237, the rule pertaining to civil injunction proceedings, provides in part:

> 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.

§ 13-16-122, 5 C.R.S. (2001) sets forth those items which are recoverable as costs in civil actions. In *Cherry Creek School District No. 5 v. Voelker*, 859 P.2d 805 (Colo.1993), the Court noted that the list of items awardable as costs in § 13-16-122, C.R.S.1998, is illustrative rather than exclusive. *Nguyen v. Regional Transp. Dist.*, 987 P.2d 936 (Colo. App. 1999).

The PDJ finds under the statutory authority and case law that the following costs are awardable:

A. Administrative Costs in the amount of $91.00 for the filing of the Petition for Injunction. §13-16-122(1)(a); *Sears v. Romer,* 928 P.2d 745, 752 (Colo. App. 1996)(holding that under § 13-16-122, costs arising from the structural costs of maintaining a judicial system such as docket fees are allowable).

B. Mileage for witness under subpoena Gregory O'Boyle, pursuant to §13-16-122(1)(e) C.R.S., § 29-9-104 C.R.S. and §13-33-103 C.R.S. in the amount of $42.00 (.28 per mile x 150 miles), subsistence payments in the amount of $5.00, and parking in the amount of $6.50 for a total of $53.50. *See Welch v. George*, 19 P.3d 675, 680 (Colo. 2000).

C. Fees for service of process. §13-16-122(1)(i) C.R.S. (a total of 2.25 hours [line item 1, 15, and 20 in investigator's billable time sheet log at $65.00 per hour) in the amount of $146.25.

Absent authority to the contrary, the PDJ finds that investigative expenses are not recoverable under §13-16-122 C.R.S. *Songer v. Bowman,* 804 P.2d 261, 265 (Colo. App. 1990)(trial court erred in awarding investigative expenses because they are not costs recoverable under §13-16-122, C.R.S).

The PDJ recommends that the Supreme Court award a total of $ 290.75 as costs in the within matter.

V. RECOMMENDATION

The Presiding Disciplinary Judge recommends that the Supreme Court of the State of Colorado GRANT the Petition for Injunction, enjoining Haskett from the unauthorized practice of law, and Order that the costs and expenses of these proceedings be assessed against Haskett in the amount of $290.75.

SUBMITTED THIS 10th DAY OF MAY, 2002.

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

Copies to:

Mac Danford — Via Hand Delivery

James C. Coyle — Via Hand Delivery
Office of Attorney Regulation Counsel

David Haskett — Via First Class Mail
Respondent