ADVANCE SHEET HEADNOTE
December 18, 2006

No. 04SA93, People v. Shell - Unauthorized Practice of Law - Actions Constituting the Practice of Law - Vagueness - First Amendment Challenge to Ban on Unauthorized Practice of Law - Sanctions for Unauthorized Practice of Law in Colorado Federal Courts - Judicial Estoppel - Right to Jury Trial in Contempt Proceedings - Indigent's Access to Transcript for Use on Appeal - Assessment of Costs and Attorneys' Fees for Punitive Contempt

In this original proceeding, the supreme court holds Suzanne Shell in contempt and fines her $6,000 for her unauthorized practice of law in two state court proceedings and a civil action filed in the United States District Court for the District of Colorado. The court finds sufficient support in the record that Shell practiced law in these proceedings without a license, and in so doing, Shell violated Colorado law and a previous order entered by this court enjoining her against the unauthorized practice of law.

The court holds that Colorado's ban on the unauthorized practice of law is constitutional and does not violate the First Amendment as applied in this case. In addition, the court concludes that the ban extends to Shell's activities in the United States District Court for the District of Colorado, where

she filed and attempted to prosecute a lawsuit on behalf of another person.

The court further holds that Shell was not entitled to a jury trial on the contempt charge as a matter of statutory or constitutional law, and rejects the claim that Shell has been deprived of due process because she was not provided with a free copy of a transcript of the proceedings below. The court does not assess costs and attorneys' fees against Shell because the sanction imposed is punitive, not remedial, in nature.

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Original Proceeding in Contempt	Case No. 04SA93
Petitioner: THE PEOPLE OF THE STATE OF COLORADO, v. **Respondent:** SUZANNE SHELL.	
CONTEMPT FOUND EN BANC December 18, 2006	

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JUSTICE EID delivered the Opinion of the Court.

This opinion considers the Presiding Disciplinary Judge's recommendation that we hold Respondent Suzanne Shell in contempt and fine her $6,000 for engaging in the unauthorized practice of law. We agree with the Presiding Disciplinary Judge and issue the contempt citation.

For the reasons explained below, we find that Shell has practiced law without a license in three separate legal proceedings since 2002, and in so doing, she has violated both Colorado law and a previous order entered by this court enjoining her against the unauthorized practice of law. Despite Shell's claims to the contrary, Colorado's ban on the unauthorized practice of law is constitutional and does not violate her rights under the First Amendment. We also disagree with Shell's assertions that she was entitled to a jury trial and that she has been deprived of due process because she was not provided with a free copy of a transcript of the proceedings below. While we fine Shell $6,000 for her unauthorized practice of law, we do not impose any additional amount for costs and attorneys' fees.

I.

Suzanne Shell is an advocate committed to exposing what she considers to be abuses of process that occur in Colorado dependency and neglect cases. Shell is not a licensed attorney, however, and her advocacy previously has led her to cross the

line between permissible activism and the unauthorized practice of law.

In May 2001, the Office of Attorney Regulation Counsel ("OARC") petitioned this court for an injunction and contempt citation against Shell. The OARC alleged that Shell engaged in the unauthorized practice of law by providing legal advice to parents involved in dependency and neglect cases, drafting pleadings for parents' use, and attempting to represent parents in judicial proceedings. Shell denied the OARC's allegations and claimed that she was entitled to provide legal advice and represent the parents because they had executed statutory powers of attorney authorizing her to act as their agent.

Shortly thereafter, Shell and the OARC entered into a "Stipulation" in which Shell agreed to the entry of an injunction preventing her from practicing law without a license in Colorado. Shell made several acknowledgments in the Stipulation, including (1) that she was familiar with Colorado law concerning the unauthorized practice of law, (2) that the "practice of law" includes activities such as offering legal advice and drafting or selecting legal documents for use by another person in a legal proceeding, and (3) that by engaging in such activities without a license, Shell committed the unauthorized practice of law. Shell further acknowledged that she was incorrect in her belief that a statutory power of

attorney allowed her to act as the signing party's legal representative. Shell agreed to pay administrative costs but the OARC did not pursue any fine for contempt.

This court entered an Order on October 25, 2001 (the "October 2001 Order"), accepting Shell's Stipulation and enjoining her against practicing law without a license in Colorado. The October 2001 Order incorporated Shell's Stipulation by reference.

Since the October 2001 Order was entered, Shell has been involved in two dependency and neglect proceedings in Colorado state courts and one civil action in the United States District Court for the District of Colorado. The OARC alleges that Shell engaged in the unauthorized practice of law in each of these cases, thereby violating Colorado law and our October 2001 Order.

The K.M. Matter, 02JV97. Shell participated in a Fremont County District Court action involving K.M., the mother of an allegedly dependent and neglected child. The court appointed attorney Daniel Kender to represent K.M. in May 2002.

Several months later, K.M. executed a statutory power of attorney providing Shell with broad powers to handle her affairs, including the power to act "in [her] stead regarding [her] Dependency and Neglect case." Shell contacted Kender in January 2003 and asked him to call her to discuss the K.M.

matter. Kender testified to the hearing master below that he did not return Shell's call.

Shell subsequently sent a faxed letter to Kender dated February 21, 2003. In the letter, Shell informed Kender that she was acting as an "agent" for K.M. "based upon the Power of Attorney" executed several weeks before. Shell stated that "[K.M.'s] legal interests may not have been adequately represented" by Kender and that "drastic action is needed immediately to protect her rights to parent her children." Attached to the letter was a discovery request (specifically, a set of requests for admissions) directed to the caseworker assigned to the K.M. matter, the guardian ad litem, and the West Central Mental Health Center. Shell directed Kender to serve the discovery request "no later than next Tuesday," and explained that she "had great success using admissions in the past." Kender testified that he ignored Shell's letter and did not serve the discovery request.

In March 2003, K.M., acting pro se and without Kender's knowledge, served a discovery request on the caseworker, guardian ad litem, and West Central Mental Health Center. With the exception of very minor differences, the requests served by K.M. are identical to the requests attached to Shell's February 2003 letter to Kender. K.M. also filed a "Motion for Clarification of Effective Assistance of Counsel" in which she

challenged Kender's representation of her interests in the dependency and neglect action. The district court struck K.M.'s pro se discovery request.

The A.F. Matter, 03JV3. While the K.M. matter was pending, Shell was involved in another dependency and neglect proceeding in Fremont County District Court, this one concerning A.F., a respondent mother. The court appointed Daniel Kender to represent A.F. A.F. subsequently executed a power of attorney authorizing Shell to act as her agent and giving Shell the power to handle her legal affairs.

As in the K.M. matter, Shell sent Kender a letter informing him that she had been engaged as an "expert consultant" by A.F. Shell advised Kender that her association with A.F. was confidential and was not to be revealed. Shell also gave Kender "information and instructions" on the defense of A.F., stating that she would provide Kender with "all the legal arguments and documentation" he might need, but admonished that they "will be useless" if Kender "fail[ed] to make the necessary arguments in court." Shell then instructed Kender to file specific documents and motions, make specific legal arguments and tender specific jury instructions. Shell also informed Kender that he should serve requests for admissions on the Department of Human Services, and directed Kender to her website to obtain a sample. Shell requested the opportunity to review the draft discovery

before it was served. Kender testified that he ignored Shell's letter.

As in the K.M. matter, A.F. filed and served pro se pleadings in her dependency and neglect action, each of which reveals a level of sophistication that is nearly impossible to attribute to A.F. given her lack of legal training. Kender was unaware that these pleadings had been filed and served by A.F. The substance and style of A.F.'s pleadings are strikingly similar to the language used in the pleadings filed in K.M.'s action, and with two trivial exceptions, A.F.'s "Motion for Clarification of Effective Assistance of Counsel" is identical to the same motion filed by K.M. in her action.

In April 2003, the Fremont County Department of Human Services requested that the trial court add Shell as a special respondent to the A.F. matter for the purpose of enjoining her against engaging in the unauthorized practice of law. Shell filed suit in federal court seeking an injunction preventing her from being added as a special respondent.

The Federal Action, 03-RB-743. Shell filed an action in the United States District Court for the District of Colorado pursuant to 18 U.S.C. section 1983 alleging that her civil rights--and those of A.F.--had been violated by eight defendants, including the Fremont County District Court and A.F.'s attorney, Daniel Kender (the "Federal Action"). Both

Shell and A.F. were named as plaintiffs, with Shell purporting to represent A.F. in the case. The federal magistrate assigned to the case entered an order on May 14, 2003, holding that Shell "cannot represent [A.F.] in this matter, nor may [Shell] sign pleadings, motions, or other documents in this case on [A.F.'s] behalf." The magistrate ordered A.F. to sign the complaint as a pro se plaintiff.

Shell--again acting on behalf of A.F.--filed a motion to reconsider, arguing that the statutory power of attorney executed by A.F. authorized Shell to act as A.F.'s legal representative. The district court denied Shell's motion to reconsider. Subsequently, the court dismissed the Federal Action for lack of subject-matter jurisdiction and failure to state a claim for relief.

The Proceedings Below. In March 2004, the OARC petitioned this court to hold Shell in contempt for violating the October 2001 Order and Colorado law prohibiting the unauthorized practice of law. The OARC cited Shell's activities in the K.M. matter, the A.F. matter, and the Federal Action to support its petition.

The Presiding Disciplinary Judge, acting as a hearing master, held a hearing on the OARC's petition and considered evidence and testimony presented by both sides. Shell videotaped the proceedings in their entirety.

Shell argued to the hearing master that there was no direct evidence that she prepared the pleadings and discovery requests filed and served pro se by K.M. and A.F., or that she otherwise provided the respondent mothers with legal advice. To support her claim, Shell offered the testimony of K.M.'s mother's boyfriend and A.F.'s mother. These relatives testified that they prepared the pleadings and discovery requests based on their research of various internet websites, and that Shell neither selected the documents nor advised the mothers to file them.

The hearing master concluded that the relatives' testimony was not credible in light of the surrounding circumstantial evidence presented by the OARC. First, the hearing master found that it was virtually impossible for K.M. and A.F. to have prepared their pleadings without assistance, given their lack of legal training. Second, the hearing master found implausible the notion that relatives of two separate mothers involved in two separate proceedings would draft virtually identical pleadings and discovery requests. Aside from Kender, who did not know about the pro se filings until after they were served, the only connection between K.M. and A.F. was Suzanne Shell.

In addition, both proceedings contained the same sequence of events arising from Shell's involvement as the mothers' representative. In both cases, Shell sent a letter to Kender

purporting to act as the mothers' agent and instructing Kender to take specific legal measures. In both cases, Kender ignored Shell's letter. And in both cases, Kender's refusal to follow Shell's instructions led to the mother filing pro se pleadings and serving pro se discovery requests. Not only were these pro se documents virtually identical, but their substance mirrored the arguments and instructions contained in Shell's letters to Kender. Shell's communications to Kender, and the subsequent pattern of events that stemmed from those communications, led the hearing master to conclude that Shell prepared or selected the pleadings and discovery requests and advised the mothers, either directly or by using the mothers' relatives as conduits for her legal advice, to file and serve them pro se.

Based on its findings, the hearing master recommended to this court that Shell be found in contempt and fined $6,000. The hearing master also recommended that Shell be assessed an additional $5,409 for legal costs and the OARC's attorneys' fees. Shell appealed the hearing master's recommendations.

Prior to filing her opening brief in this appeal, Shell requested a transcript of the proceedings below, to be paid for at state expense. Shell argued that indigence prevented her from paying for the transcript. This court denied Shell's motion.

In this appeal, Shell offers several reasons for why the court should not accept the hearing master's recommendation, and we consider them in turn.

Section II addresses Shell's claim that the evidence presented below was inadequate to support the hearing master's finding that she engaged in the unauthorized practice of law. As we explain, the evidence in the record sufficiently supports the hearing master's findings that Shell offered legal advice, drafted legal pleadings and attempted to represent another person in a judicial proceeding, all of which constitute the practice of law.

In section III, we address Shell's defenses against the enforcement of Colorado's ban on the unauthorized practice of law against her in this action. In particular, Shell claims that the ban is unconstitutionally vague and violates the First Amendment. Shell further contends that the court lacks jurisdiction to punish the unauthorized practice of law in federal courts, and that therefore we cannot hold her in contempt for attempting to represent A.F. in the Federal Action. Shell also urges that the statutory powers of attorney executed by K.M. and A.F. authorized her to to act as the mothers' legal representative. We disagree with Shell on each count.

In section IV of our opinion, we consider Shell's claim that her right to a jury trial was violated in this case. We

hold that Shell was not entitled to a jury trial because the recommended fine is not sufficiently serious to trigger Shell's constitutional right to a jury trial, and because Shell has no independent right to a jury trial under a Colorado statute.

Section V of the opinion addresses Shell's assertion that her right to due process was violated because she was denied a transcript of the proceedings below for use in this appeal. We find that any error resulting from the failure to provide Shell with a transcript was harmless because it did not impact this court's ability to consider the issues raised in Shell's appeal.

Finally, in section VI, we explain why Shell cannot be assessed costs and attorneys' fees as a result of the contempt proceeding. Consequently, we adopt the hearing master's recommendation as to the citation of contempt and the imposition of a $6,000 fine, but decline to follow that recommendation with respect to costs and attorneys' fees.

II.

A.

Colorado law prohibits the unauthorized practice of law, i.e., the practice of law by a person who is not a licensed attorney in good standing with the State Bar. See Unauthorized Practice of Law Comm. v. Grimes, 654 P.2d 822, 823 (Colo. 1982). This court has the exclusive authority to punish the unauthorized practice of law with contempt. See id. Where an

individual previously has been enjoined by the court against practicing law without a license, violations of that injunction are punishable in contempt proceedings conducted pursuant to C.R.C.P. 107.[1] Cf. Austin v. City & County of Denver, 156 Colo. 180, 184, 397 P.2d 743, 745 (1964) ("The power to punish for contempt, as a punitive measure or to coerce obedience, is an inherent and indispensable power of the courts.").

We previously have defined the "practice of law" as acting "in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting him in connection with these rights and duties . . . ." Denver Bar Ass'n v. Pub. Util. Comm'n, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964). Applying this definition, we have held that an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for

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[1] Shell argues in passing that the proceedings below were constitutionally insufficient. We find her claim meritless. Rule 107 entitles the alleged contemnor to notice of the charges and an opportunity to respond at a trial on the merits by cross-examining adverse witnesses and by presenting evidence and witnesses of her own. See C.R.C.P. 107(d)(1). Shell received the full panoply of these protections in the proceedings below, consistent with the demands of due process. See Harris v. United States, 382 U.S. 162, 166 n.4 (1965) ("Due process of law . . . in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation." (citation omitted)).

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. See id.; see also Grimes, 654 P.2d at 823 (offering case-specific legal advice and selecting case-specific legal documents constitutes the practice of law); Unauthorized Practice of Law Comm. v. Prog, 761 P.2d 1111, 1115 (Colo. 1988) (same).

As we explained in Grimes, we have attempted to avoid any doubt about the activities that constitute the "practice of law" by enacting C.R.C.P. 201.3, which provides a thorough "definition of what constitutes the practice of law which is supported by long-standing case authority . . . ." 654 P.2d at 824 n.1. That definition includes "[f]urnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law," as well as "presenting cases before courts . . . ." C.R.C.P. 201.3(2)(b)(i) & (ii).

B.

Applying the standard set forth above, the hearing master found that Shell engaged in the unauthorized practice of law by sending letters to Kender directing him to follow her legal advice. The hearing master also found that Shell had advised K.M. and A.F. to file and serve their pleadings and discovery requests without the knowledge or approval of Kender, and that Shell was instrumental in preparing or selecting those pleadings

and discovery. This, too, constituted the unauthorized practice of law. Finally, the hearing master found that Shell engaged in the unauthorized practice of law by attempting to represent A.F. in the Federal Action.

We accept the hearing master's findings of fact unless they are so clearly erroneous as not to find support in the record. See Page v. Clark, 197 Colo. 306, 313, 592 P.2d 792, 796 (1979). Our consideration of the record reveals that the hearing master's findings were not clearly erroneous, and we defer to the hearing master's resolution of the conflicting facts in evidence.

The record sufficiently supports the finding that Shell engaged in the unauthorized practice of law in the K.M. and A.F. matters. These cases followed a remarkably similar pattern. In both cases, Shell wrote letters to the mothers' attorney instructing him to take specific legal measures. In both cases, once Shell's instructions were ignored, the mothers filed and served pro se pleadings and discovery requests without the knowledge or approval of their attorney. The hearing master reasonably concluded that these legal documents were the direct result of Shell's involvement. As the hearing master found, it was impossible for K.M. and A.F. to have prepared their pleadings and discovery requests without the assistance of someone with legal experience in dependency and neglect cases.

It also defied reason that K.M. (or her family) would prepare pleadings and discovery requests that were nearly identical to pleadings and discovery requests prepared by A.F. (or her family). Not only were the documents filed by K.M. and A.F. nearly identical, but they incorporated many of the legal arguments that Shell separately provided to Kender in her letters. The only connection between K.M. and A.F. other than their common attorney, who had no knowledge of his clients' pro se filings, was Shell. In light of this record, the hearing master reasonably concluded that Shell was providing legal advice to K.M. and A.F. and was drafting legal documents for their use.

We acknowledge that conflicting evidence was presented to the hearing master regarding Shell's contact with K.M. and A.F. Specifically, family members of K.M. and A.F. testified that Shell had no involvement in drafting the pleadings and discovery requests that the mothers filed pro se. These family members testified that they prepared the legal documents based principally upon internet research. The hearing master, however, concluded that the family members' testimony was simply incredible given the unlikelihood that two separate families would prepare legal documents that were virtually identical both to one another and to the advice that Shell provided to Kender in her letters. Since there is sufficient evidence in the

record refuting the family members' testimony, we defer to the hearing master's factual conclusion that Shell did in fact provide legal advice to K.M. and A.F. and draft legal pleadings and discovery requests for their use. See Page, 197 Colo. at 313, 592 P.2d at 796. Providing legal advice to K.M. and A.F. and preparing legal documents for use in their dependency and neglect proceedings constituted the unauthorized practice of law. See C.R.C.P. 201.3(2)(b)(i); Prog, 761 P.2d at 1115.

Beyond Shell's involvement in the two dependency and neglect proceedings, there is no question that Shell filed the Federal Action on behalf of herself and A.F., and that she subsequently filed a motion asserting her right to prosecute A.F.'s claims in the Federal Action. Drafting and filing a legal pleading on behalf of another person and without a license is clearly the unauthorized practice of law. See C.R.C.P. 201.3(2)(b)(i) & (ii).

Our review of the record reveals no reason to disturb the hearing master's factual findings that Shell engaged in the unauthorized practice of law. These facts having been established, we now turn to considering Shell's challenge to the enforcement of the ban against her in this case.

III.

A.

Shell claims that Colorado's ban on the unauthorized practice of law violates her right to due process because it is unconstitutionally vague, both on its face and as applied to her in this case. We disagree.

The vagueness doctrine is rooted in the right to due process of law, which requires that a law provide "fair notice of the conduct that has been determined to be unlawful." Smith v. Charnes, 728 P.2d 1287, 1290 (Colo. 1986). Thus a law offends due process if "it does not provide fair warning of the conduct prohibited or if its standards are so ill-defined as to create a danger of arbitrary and capricious enforcement." Parrish v. Lamm, 758 P.2d 1356, 1367 (Colo. 1988). Under this standard, a law "is not void for vagueness if it fairly describes the conduct forbidden, and persons of common intelligence can readily understand its meaning and application." Id. Shell bears the burden of establishing the unconstitutional vagueness of our ban on the unauthorized practice of law beyond a reasonable doubt. See People v. Baer, 973 P.2d 1225, 1230 (Colo. 1999).

Furthermore, for Shell to succeed on her challenge that the ban is facially void for vagueness, she must show that it is incomprehensible in all of its applications. See People ex rel.

City of Arvada v. Nissen, 650 P.2d 547, 550 (Colo. 1982). Shell's claim immediately fails this test, because C.R.C.P. 201.3(2)(b) unambiguously defines the practice of law to include "drafting documents and pleadings," "giving advice with respect to the law," and "presenting cases before courts"--in other words, exactly the activities in which Shell engaged in the K.M. matter, the A.F. matter, and the Federal Action. The activities delineated in C.R.C.P. 201.3 were not pulled from thin air, but were grounded in prior decisions of this court describing the nature of the practice of law. See Grimes, 654 P.2d at 824 n.1 (explaining that the definition of "practice of law" in C.R.C.P. 201.3 is "supported by long-standing case authority"). We believe that the activities described in Rule 201.3 and our controlling caselaw are specific enough to provide a person of common intelligence with notice of what activities constitute the practice of law, and thus the ban on the unauthorized practice of law is not facially void for vagueness. See People v. Hickman, 988 P.2d 628, 644 (Colo. 1999) (rejecting facial vagueness challenge where law was "sufficiently specific to provide the constitutionally required guidance to individuals seeking to comply with the law . . . .").

Shell's claim that our ban is unconstitutionally vague as applied to her similarly fails. To prevail, Shell must show that the ban on the unauthorized practice of law "does not, with

sufficient clarity, prohibit the conduct against which it is enforced." People v. McIntier, 134 P.3d 467, 475 (Colo. App. 2005). The clarity of the ban is viewed in light of Shell's knowledge that her conduct was prohibited. See Parker v. Levy, 417 U.S. 733, 756 (1974). In 2001, Shell expressly stated that she understood that our ban forbids drafting legal pleadings, providing legal advice, and attempting to represent another person in a legal proceeding without a license. These are the very activities in which Shell engaged in the K.M. matter, the A.F. matter, and the Federal Action, and thus she cannot claim that Colorado law is void for vagueness as applied to her. See id.

B.

Shell also claims that her actions were permissible exercises of her First Amendment freedom of speech and freedom to petition the government for a redress of grievances. We reach a different conclusion.

In general, Colorado's ban on the unauthorized practice of law does not implicate the First Amendment because it is directed at conduct, not speech. See Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 456 (1978) (suggesting that the government's regulation of the practice of law is a regulation of conduct, not speech); S. Christian Leadership Conference v. Sup. Ct. of La., 252 F.3d 781, 789 (5th Cir. 2001) (finding that

state prohibition on unlicensed students practicing law in state courts did not regulate speech); Drew v. Unauthorized Practice of Law Comm., 970 S.W.2d 152, 155 (Tex. App. 1998) (holding that ban on unauthorized practice of law did not implicate the First Amendment); Fla. Bar v. Furman, 376 So.2d 378, 379 (Fla. 1979) (rejecting argument from unlicensed attorney that ban on unauthorized practice of law violated freedom of speech).

The fact that our ban touches on the legal content of the advice offered or the pleadings drafted by an unlicensed person is of no constitutional significance, since "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949) (emphasis added); see also Ohralik, 436 U.S. at 456 (applying Giboney in the context of attorney regulation case). In this respect, our ban on the unauthorized practice of law is no different from state laws prohibiting bribery (section 18-8-302, C.R.S. (2006)), extortion (section 18-3-207, C.R.S. (2006)), or criminal solicitation (section 18-2-301, C.R.S. (2006)). Each of these unlawful activities requires some method of communication, and yet it is "well established that speech which, in its effect, is tantamount to legitimately proscribable nonexpressive conduct

may itself be legitimately proscribed, punished, or regulated incidentally to the constitutional enforcement of generally applicable statutes." Rice v. Paladin Enter., Inc., 128 F.3d 233, 243 (4th Cir. 1997) (citing Cohen v. Cowles Media Co., 501 U.S. 663, 669 (1991)).

It is true that some activities constituting the practice of law are difficult to disentangle from the exercise of free speech. See Lawline v. Am. Bar Ass'n, 956 F.2d 1378, 1386 (7th Cir. 1992) ("While the practice of law and the exercise of free speech are not indistinguishable, neither are they mutually exclusive."). However, none of Shell's actions at issue in this case presents such a difficulty. Any impact on speech in this case "is merely the incidental effect of observing an otherwise legitimate regulation." Id.

We also find no basis for Shell's claim that our ban is an unconstitutional abridgement of her right to petition the government for a redress of grievances. As we held in Grimes, the First Amendment right to file a lawsuit does not extend to filing a lawsuit on behalf of another, nor does it prohibit the state from restricting legal representation to licensed attorneys. See 654 P.2d at 824; see also Turner v. Am. Bar Ass'n, 407 F. Supp. 451, 478 (D. Ala. 1975) (rejecting claim that individual has right to legal representation by an unlicensed attorney based on the right to petition for redress

of grievances); Lawline v. Am. Bar Ass'n, 738 F. Supp. 288, 296 (N.D. Ill. 1990), aff'd 956 F.2d 1378 (7th Cir. 1992) (applying Turner). Shell offers no legal authority that persuades us to revisit our decision in Grimes, and therefore, her First Amendment challenge lacks merit.

The court also is unpersuaded by Shell's claim that the ban on the unauthorized practice of law is unconstitutionally overbroad. The overbreadth doctrine arises from the concern that a law's scope may be so broad that it either restricts speech protected by the First Amendment or has a chilling effect on such speech. See People v. Shepard, 983 P.2d 1, 3 (Colo. 1999). The alleged overbreadth "must be real and substantial, judged in relation to the statute's plainly legitimate sweep." Id.

As this case reveals, one of the touchstones of Colorado's ban on the unauthorized practice of law is an unlicensed person offering advice or judgment about legal matters to another person for use in a specific legal setting. See Denver Bar Ass'n, 154 Colo. at 280, 391 P.2d at 471. The ban's focus on case-specific legal practice keeps it from becoming so malleable as to restrict Shell's right to criticize legal rulings or advocate for the reform of Colorado's legal system. Any potential limitation on protected speech or conduct caused by the ban "is not real and substantial as compared" to the

legitimate and permissible ban on the unauthorized practice of law, which concerns "a whole range of easily identifiable and constitutionally proscribable conduct." Shepard, 983 P.2d at 4. We therefore cannot agree with Shell's claim of overbreadth.

C.

We also are unpersuaded by Shell's assertion that the court lacks jurisdiction to sanction her for practicing law without a license in federal court.

This court has the authority "to regulate and control the practice of law in Colorado," Grimes, 654 P.2d at 823, and to that end, we previously have punished violations of the professional rules of conduct committed in federal court proceedings. See People v. Heyer, 176 Colo. 188, 489 P.2d 1042 (1971) (sanctioning attorney for violations of rules of conduct in Colorado federal court). Other states have acted similarly. See, e.g., Disciplinary Counsel v. Givens, 832 N.E.2d 1200, 1201 (Ohio 2005) ("[W]e are also authorized to enjoin the unauthorized practice of law before federal courts located in this state."); Kennedy v. Bar Ass'n of Montgomery County, Inc., 561 A.2d 200, 208-09 (Md. 1989) (holding that state court could regulate the practice of law in federal courts located in the state); State ex rel. Disciplinary Comm'n v. Crofts, 500 N.E.2d 753, 756 (Ind. 1986) (same). In keeping with these decisions and our mandate to regulate the practice of law in Colorado, we

construe our ban on the unauthorized practice of law to include the practice of law in Colorado federal courts.

It is certainly true that the Colorado federal courts can allow individuals to engage in legal practice in federal courts who would not otherwise be allowed to practice law in Colorado state courts. See Sperry v. Florida ex rel. Fla. Bar, 373 U.S. 379 (1963) (holding that, under the Supremacy Clause, a state court could not enforce a prohibition on the unauthorized practice of law against an individual who was permitted to practice law under the rules of a federal court located in the state's jurisdiction). Nevertheless, the Supreme Court made clear in Sperry that "the State maintains control over the practice of law within its borders except to the limited extent necessary for the accomplishment of . . . federal objectives." Id. at 402.

There are no such "federal objectives" in this case. The United States District Court for the District of Colorado, the federal court in which Shell filed the Federal Action on behalf of A.F., restricts the practice of law to those individuals who are "licensed by the highest court of a state, federal territory, or the District of Columbia where a written examination was required for admission . . . ." D.C.Colo.LCivR 83.3(A); see also D.C.Colo.LCivR 11.1(A) ("Only pro se individual parties and members of this court's bar may appear or

sign pleadings, motions, or other papers."). Shell does not meet this standard for practice in the Colorado federal district court because she is not licensed as an attorney in any state or territory. In the absence of preemption by the federal courts, this court has the power to sanction Shell for her unauthorized practice of law in the Federal Action.

D.

Shell asserts that the statutory powers of attorney executed by K.M. and A.F. authorized her to act as the mothers' legal representative in their dependency and neglect proceedings. However, Shell acknowledged in her 2001 Stipulation with the OARC that a statutory power of attorney did not give her the ability to practice law without a license. The doctrine of judicial estoppel binds Shell to her previous acknowledgment that a power of attorney is not a proxy for a law license. See Estate of Burford v. Burford, 935 P.2d 943, 947 (Colo. 1997) (explaining judicial estoppel). Judicial estoppel is "an equitable doctrine by which courts require parties to maintain a consistency of positions," thereby "preventing the parties from deliberately shifting positions to suit the exigencies of the moment." Id.

Under this doctrine, Shell cannot contradict her acknowledgment in her 2001 Stipulation that statutory powers of attorney do not allow her to practice law. See Leonia Bank v.

Kouri, 772 N.Y.S.2d 251, 255-56 (N.Y. App. Div. 2004) (holding that stipulation precluded litigant from asserting contrary position in subsequent case); see also Hall v. GE Plastic Pac. PTE Ltd., 327 F.3d 391, 396 (5th Cir. 2003) (explaining that litigant could not assert position inconsistent with one taken in previous proceeding, even though the previous proceeding did not amount to an adjudication of the issue); In re Adoption of S.A.J., 838 A.2d 616, 621 (Pa. 2003) (same). Thus judicial estoppel prevents Shell from resurrecting an argument that she previously acknowledged was incorrect. See Scarano v. Cent. R.R. Co., 203 F.2d 510, 513 (3d Cir. 1953) (applying judicial estoppel doctrine) (quoted in Estate of Burford, 935 P.2d at 947).

* * *

To summarize, Colorado's ban on the unauthorized practice of law is not vague and does not violate the First Amendment. We also hold that, in this case, our ban extends not only to Shell's unauthorized practice of law in state courts, but also to her unauthorized practice of law in the Federal Action. Finally, Shell cannot claim to have relied on the statutory powers of attorney executed by K.M. and A.F., because she previously has acknowledged in a written stipulation with the OARC (incorporated by reference in the October 2001 Order) that such statutory powers of attorney do not allow her to act as an

attorney at law. We next consider whether Shell should have received a jury trial on the OARC's petition for contempt.

IV.

Shell contends that she was entitled to a jury trial under the Federal and State Constitutions and section 16-10-101, C.R.S. (2006). We hold otherwise.

A.

Section 16-10-101 provides, in relevant part:

> The right of a person who is accused of an offense other than a noncriminal traffic infraction or offense, or other than a municipal charter, municipal ordinance, or county ordinance violation . . . to have a trial by jury is inviolate . . . .

(emphasis added). Shell argues that the plain language of section 16-10-101 entitles her to a jury trial on the OARC's contempt petition. This argument, however, ignores the definition of the term "offense" used in the statute.

An "offense," as used in section 16-10-101, has been defined by the General Assembly as "a violation of . . . any state statute for which a fine or imprisonment may be imposed." § 18-1-104(1), C.R.S. (2006) (emphasis added). By its plain terms, therefore, section 16-10-101 extends a statutory right to a jury trial only to violations of state statutes. Contempt, of course, is not a statutory offense, but instead is "an inherent and indispensable power of the court and exists independently of

legislative authorization." People v. Barron, 677 P.2d 1370, 1372 (Colo. 1984). The General Assembly recognized this distinction when it abolished all common-law crimes in Colorado, but simultaneously noted that such abolition "does not affect the power of a court to punish for contempt . . . ." § 18-1-104(3). Thus the plain language of section 16-10-101 relates only to offenses properly classified as crimes defined by statute, not to contempt charges, and Shell has no right to a jury trial on the OARC's contempt allegation under the statute.[2]

B.

Having rejected Shell's statutory claim, we turn to her argument that the Federal and State Constitutions guarantee her a jury trial. See U.S. Const. amend. VI ("In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury . . . ."); Colo. Const. art. II, § 16 ("In criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury . . . ."). The constitutional guarantee of a jury trial in criminal cases does not extend to non-serious or "petty" offenses. See Duncan v. Louisiana, 391 U.S. 145, 158 (1968); Austin v. City & County of Denver, 170 Colo. 448, 456, 462 P.2d 600, 604 (1969). In the same vein, the right to a jury trial

[2] The court of appeals reached the same conclusion in Kourlis v. Port, 18 P.3d 770 (Colo. App. 2000).

equally applies to serious contempt charges, but not to non-serious or "petty" contempt charges. See Taylor v. Hayes, 418 U.S. 488, 495 (1974).

To determine whether an offense should be characterized as "serious" or "petty," we first look for "objective indications of the seriousness with which society regards the offense." Lewis v. United States, 518 U.S. 322, 325 (1996) (quoting Frank v. United States, 395 U.S. 147, 148 (1969)). These "objective indications" often are found in the "legislature's judgment about the offense's severity," whether in the legislature's explicit designation of an offense as serious or petty or in "the maximum penalty attached to the offense . . . ." Lewis, 518 U.S. at 326. In Colorado, the General Assembly has designated a category of criminal actions as "petty offenses" that are separate from misdemeanors and felonies and carry a maximum fine of $500. See § 18-1.3-503, C.R.S. (2006). We have held that the legislature's categorization of "petty offenses" is an objective indication that the legislature generally considers misdemeanors and felonies to be "serious" offenses that must be tried to a jury. See Christie v. People, 837 P.2d 1237, 1241 (Colo. 1992) (holding that a criminal offense carrying a maximum punishment in excess of $500 requires trial to a jury); Austin, 170 Colo. at 456, 462 P.2d at 604 (same).

The "objective indications" that we followed in Christie and Austin and applied to statutory offenses are unavailable to us in this case because the General Assembly has not classified contempt as either "petty" or "serious" in the Colorado statutes, and contempt does not carry a legislatively determined sentence. For this reason, the categories of criminal offenses created by the General Assembly--and their attendant maximum penalties--are not applicable to contempt charges.

In the absence of an "objective indication" from the legislature, the determinant of whether a particular contempt charge is sufficiently serious to require a jury trial is the severity of the fine actually imposed upon the contemnor. See Frank, 395 U.S. at 151. The United States Supreme Court "has not specified what magnitude of contempt fine may constitute a serious criminal sanction" for purposes of the Sixth Amendment, but it has held that contempt fines of $5,000 for individuals, and $10,000 for non-individuals such as corporations, are presumptively "petty" and do not require a jury trial. See Int'l Union, UMW of Am. v. Bagwell, 512 U.S. 821, 837 n.5 (1994).

Shell argues that the hearing master's recommendation of a $6,000 fine for contempt exceeds the $5,000 threshold and entitles her to a jury trial. We disagree. The Supreme Court has made clear that $5,000 carries no "talismanic significance,"

and that the critical question remains whether the fine imposed is "of such magnitude" that a jury trial is warranted. Muniz v. Hoffman, 422 U.S. 454, 477 (1975). Shell offers no explanation for why a $6,000 fine, rather than a $5,000 fine, is of "such magnitude" that it should entitle her to a jury trial under this criterion. We agree with the opinions of other courts that have held that fines in excess of $5,000--so long as they are reasonable--do not give rise to a constitutional right to a trial by jury. See United States v. Clavette, 135 F.3d 1308, 1309-10 (9th Cir. 1998) (holding that $25,000 fine did not trigger defendant's constitutional right to a jury trial); United States v. Unterburger, 97 F.3d 1413, 1416 (11th Cir. 1996) (holding that fine of $10,000 was not sufficiently serious to trigger the defendant's jury trial right). While we take no position on whether the courts in Clavette or Unterburger were correct that fines of $25,000 or $10,000, respectively, are petty, we agree with the reasoning of these decisions that $5,000 is not talismanic. Applying this principle, we find that the hearing master's recommendation of a $6,000 fine for contempt in this case is petty such that it does not trigger Shell's constitutional right to a jury trial.

V.

Shell contends that she is entitled to a new hearing on the OARC's contempt petition because she was not provided with a

copy of the transcript from the proceedings below. This court denied Shell's petition for a transcript at state expense.

Upon an adequate showing of economic hardship, "destitute defendants must be afforded as adequate [an] appellate review as defendants who have money enough to buy transcripts." Jurgevich v. Dist. Court, 907 P.2d 565, 567 (Colo. 1995) (quoting Griffin v. Illinois, 351 U.S. 12, 19 (1956)). Consequently, "the state must provide either a free transcript or other means of affording adequate and effective appellate review to indigent defendants." Id. The failure to provide an indigent defendant with a transcript is reversible error only if it prevents the appellate court from adequately reviewing the issues raised by the defendant on appeal. See People v. Shearer, 181 Colo. 237, 242, 508 P.2d 1249, 1252 (1973).

The OARC argues that there is no error because Shell failed to adequately demonstrate that she was indigent. We need not reach this issue, however, because Shell has not been harmed by the lack of a transcript. Shell videotaped the entire proceedings before the hearing master, and was able to provide this court with citations to the videotapes of the hearing. The court had the opportunity to review the video recordings to the extent necessary to consider the issues raised in Shell's appeal. Since we were able to adequately consider the issues

raised by Shell on appeal, she is not entitled to a new hearing. See id. at 242, 508 P.2d at 1252.

VI.

Finally, Shell argues that the hearing master erroneously recommended that this court award costs and attorneys' fees to the OARC as part of the contempt citation. We agree with Shell and decline to adopt the hearing master's recommendation as to costs and attorneys' fees.

Rule 107 of the Colorado Rules of Civil Procedure recognizes two types of sanctions for contempt of court: "remedial sanctions," which are imposed "to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform," C.R.C.P. 107(a)(5), and "punitive sanctions," which are imposed as "[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," C.R.C.P. 107(a)(4). Rule 107(d)(2) permits the assessment of costs and attorneys' fees where remedial sanctions are imposed against a contemnor. In contrast, the provisions relating to punitive contempt sanctions do not authorize the assessment of costs and attorneys' fees. See C.R.C.P. 107(d)(1).

We interpret rules of procedure consistent with principles of statutory construction. See Leaffer v. Zarlengo, 44 P.3d

1072, 1078 n.6 (Colo. 2002). These principles teach that words or provisions should not be added to a rule, see People v. Cross, 127 P.3d 71, 73 (Colo. 2006), and that the inclusion of certain terms in a rule implies the exclusion of others, see Zab, Inc. v. Berenergy Corp., 136 P.3d 252, 261 (Colo. 2006) (Eid, J., concurring). Applying these principles, we hold 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. We find the rule's silence dispositive in light of the language in C.R.C.P. 107(d)(2) permitting the assessment of costs and fees when a remedial sanction is imposed. See In re Lopez, 109 P.3d 1021 (Colo. App. 2004) (holding that costs and fees cannot be assessed when a court imposes punitive sanctions); Eichorn v. Kelley, 56 P.3d 124 (Colo. App. 2002) (same).

The sanction for contempt recommended by the hearing master in this case clearly is punitive--not remedial--in nature. Shell is not given the choice of accepting the $6,000 fine or complying with the court's October 2001 Order, and such a choice is indispensable in order for the sanction to be remedial. See C.R.C.P. 107(a)(5) (explaining that remedial sanctions are imposed to compel compliance); C.R.C.P. 107(d)(2) (stating that remedial sanctions must be accompanied by a written order explaining how the contemnor "may purge the contempt and the

sanctions" through compliance). Since the recommended sanction against Shell is punitive, costs and attorneys' fees cannot be awarded. See C.R.C.P. 107(d)(1). We agree with Shell and we do not assess costs and attorneys' fees.

VII.

Suzanne Shell has engaged in the unauthorized practice of law in direct violation of both Colorado law and this court's October 2001 Order enjoining her against engaging in legal practice without a license. We hereby hold her in contempt of this court and fine her $6,000. We do not assess any additional amount for costs and attorneys' fees.

The court's Order of October 25, 2001, enjoining Shell against practicing law without a license in Colorado remains in effect.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202	RECEIVED FEB 24 2005 REGULATION COUNSEL
Petitioner: THE PEOPLE OF THE STATE OF COLORADO, **Respondent:** SUZANNE SHELL.	Case Number: **04SA093**

REPORT PURSUANT TO C.R.C.P. 239(a)
RE: FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION FOR FINAL DISPOSITION

On January 14 and 18, 2005, the parties presented testimony, exhibits, and arguments to the Presiding Disciplinary Judge ("PDJ") as Hearing Master in this criminal contempt proceeding under C.R.C.P. 238. James C. Coyle appeared on behalf of the Office of Attorney Regulation Counsel ("the People"). Paul Grant appeared on behalf of Suzanne Shell ("Respondent"), who was also present. After careful consideration of and methodical deliberation upon all of the testimony and exhibits, the PDJ issues the following Report to the Supreme Court pursuant to C.R.C.P. 239(a).

Procedural Background

On March 18, 2004, the People filed with the Colorado Supreme Court ("the Court") a Petition for a Contempt Citation. In their Petition, the People charge that Respondent willfully and repeatedly violated an order issued by the Court on October 25, 2001 ("the October 2001 Order"), enjoining Respondent from the unauthorized practice of law. The People request that Respondent be held in criminal contempt under C.R.C.P. 107, and assessed a fine of $6,000 plus the costs incurred in this proceeding. The People, however, are not seeking a jail sentence. Respondent denies the allegations contained in the People's Petition. On June 1, 2004, the Court issued an order appointing the PDJ to serve as Hearing Master in this matter. Accordingly, the PDJ conducted a hearing pursuant to C.R.C.P. 238.

The following witnesses testified on behalf of the People: Rocco F. Meconi, Esq., Daniel Kender, Esq., and Anna Hall Owen, Esq., all attorneys practicing in the Fremont District Court in dependency and neglect matters.

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The following witnesses testified on behalf of Respondent: Ms. Christine Korn, the grandmother of a child in a Fremont dependency and neglect action, and Steve Labrue, the boyfriend of the grandmother of a child in a Fremont dependency and neglect action. In addition, the PDJ advised Respondent of her rights under *People v. Curtis*, 681 P.2d 504 (Colo. 1984). Thereafter Respondent took the stand and testified on her own behalf. The People offered and the PDJ accepted Exhibits 1-15. Respondent offered and the PDJ accepted Exhibits A, B, and C.

I. ISSUE

The Colorado Supreme Court ordered Respondent, a non-attorney, to refrain from the unauthorized practice of law. Thereafter, Respondent gave an attorney unsolicited legal advice on the representation of two separate clients and encouraged those clients to file pleadings without the attorney's knowledge. When the trial court in one of the cases attempted to stop Respondent from interfering, Respondent filed suit in federal court on behalf of the client. Did Respondent thereby commit criminal contempt by willfully violating the injunction?

II. FINDINGS OF FACT

For this Report, the PDJ takes judicial notice of the record in Respondent's previous unauthorized practice of law case, 01SA136, out of which this case arises. *Hughes v. Jones*, 3 P.2d 1074, 1075-76 (Colo. 1931) (Supreme Court has the right to examine its own records and take judicial notice thereof if one party is the same); *People v. Howard*, 342 P.2d 635, 636 (Colo. 1959) (*en banc*) (Supreme Court sitting in discipline may take judicial notice of its own records); *Eadon v. Reuler*, 361 P.2d 445, 450 (Colo. 1961) (Supreme Court may take judicial notice of its own records); *In re Interrog. Propounded by Gov. Roy Romer on H.B. 91S-1005*, 814 P.2d 875, 880 (Colo. 1991) (*en banc*) (Supreme Court may take judicial notice of matters of public record); *Vento v. Colo. Natl. Bank*, 985 P.2d 48, 52 (Colo. App. 1999) (court may take judicial notice of contents of court records in related proceeding).

Based upon the evidence presented, including witness testimony and admitted exhibits, as well as the record in case number 01SA136, the PDJ makes the following finding of fact beyond a reasonable doubt:

Respondent is not an attorney, and is not licensed to practice law in the State of Colorado. Respondent admits she is not a lawyer. She does, however, hold herself out as:

> [A] writer, journalist, publisher, expert consultant and independent documentary video producer engaged in

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> qualitative research, news gathering, activism and advocacy, and publishing information concerning practices by child protection agencies, guardians ad litem, courts, attorneys, and service providers and their conformance with constitutional, statutory and procedural mandates.[1]

On May 1, 2001, the People filed with the Court a Petition for Injunction and Contempt Citation, alleging that Respondent was engaged in the unauthorized practice of law and requesting an injunction to prohibit such conduct. This petition initiated case number 01SA136. Specifically, the petition claimed that in seven separate juvenile cases, Respondent had provided legal advice to respondent parents, instructed attorneys on how to handle the parents' legal matters, drafted pleadings on behalf of parents without the supervision of an attorney, and/or attempted to represent parents during pending judicial proceedings. The petition alleged that Respondent disputed the legal advice and conclusions of the parents' attorneys, and prepared pleadings for the parents to file *pro se*.

On July 17, 2001, the Court remanded the matter to the PDJ for a determination of facts and a recommendation on whether to enjoin Respondent from the unauthorized practice of law. Accordingly, the PDJ assumed the role of special master in 01SA136.

On August 13, 2001, the PDJ received a Motion to Dismiss filed by Respondent, *pro se*.[2] Respondent claimed, *inter alia*, that her conduct was acceptable because the respondent parents had executed power of attorney forms in her favor. In her Motion to Dismiss, Respondent took the position that the Uniform Statutory Power of Attorney Act, C.R.S. § 15-1-1300 *et. seq.*, authorized her conduct as an "agent" for the individuals in the underlying actions.[3] In particular, Respondent relied on the language contained in C.R.S. § 15-1-1313, which reads:

> (1) In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:
> (a) Assert and prosecute before a court...a claim, claim for relief, cause of action...and defend against an individual, a legal entity, or government...

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[1] Exhibit 12(a).

[2] Exhibit 2, Motion to Dismiss.

[3] Attached to Respondent's Motion to Dismiss are a number of power of attorney forms, which Respondent offered in support of her advocacy on behalf of others. Each of these documents state that the power of attorney continues even if the respondent parent becomes disabled, incapacitated, or incompetent, but specifies that "[t]his power of attorney terminates when my children are returned to my custody and control by the court, or when rescinded in writing by me."

The PDJ denied Respondent's Motion to Dismiss, specifically stating in a written order dated August 30, 2001:[4]

> Respondent's argument is without merit . . . A power of attorney does not permit a person to act in a representative capacity of another person or entity in the aforementioned activities[5] absent their being admitted to the practice of law in the state.

The PDJ then set the matter for trial on October 29 – November 1, 2001, in the El Paso County Courthouse.

The matter, however, did not go to trial. On or about September 19, 2001, Respondent entered into a stipulation with the People in 01SA136, entitled Stipulation, Agreement and Affidavit Consenting to an Order of Injunction ("the Stipulation").[6] In the Stipulation, the parties agreed that Respondent was acting in good faith upon a mistaken belief that she was not engaging in the unauthorized practice of law according to her "understanding of statutory powers of attorney and United States Supreme Court case law." Respondent acknowledged "that such belief was incorrect and that she engaged in the unauthorized practice of law by providing legal advice to parents in at least one dependency and neglect proceeding, and by drafting pleadings on behalf of such clients without the supervision of an attorney."

Among other aspects of the Stipulation, the parties established that "the Supreme Court and its Unauthorized Practice of Law Committee have exclusive jurisdiction to determine what constitutes the unauthorized practice of law in Colorado." The Stipulation contained the following language:

> The unauthorized practice of law includes but is not limited to an unlicensed person's actions as a representative in protecting, enforcing or defending the legal rights and duties of another and/or counseling, advising and assisting that person in connection with legal rights and duties. *See Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467(1964). In addition, preparation of legal documents for others by an unlicensed person, other than solely as a scrivener, is the unauthorized practice of law unless the Colorado Supreme Court has authorized such action in a

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[4] Exhibit 2, Order Re: Motion to Dismiss.

[5] These activities include protecting, enforcing or defending the legal rights and duties of another, and counseling, advising and assisting others in connection with their legal rights and duties. *Unauthorized Prac. of Law Comm. of Sup. Ct. of Colo. v. Prog*, 761 P.2d 1111, 1115 (Colo. 1988).

[6] Exhibit 1.

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specific circumstance. *Title Guarantee v. Denver Bar Ass'n,* 136 Colo. 423, 312 P.2d 1011(1957). The respondent thus understands that:

a. she cannot give legal advice to another individual;
b. she cannot choose legal documents on behalf of another individual which she believes is appropriate for that individual, unless she is under the supervision of an attorney;
c. she cannot draft legal documents on behalf of another individual without the supervision of an attorney;
d. she cannot apply or interpret law for another individual's situation without the supervision of an attorney;
e. she cannot prepare cases for trial for another without the supervision of an attorney;
f. she cannot operate an interactive website which takes information from another individual without the supervision of an attorney;
g. she cannot represent another individual in any legal transaction or matter unless specifically allowed by Supreme Court rule or statute.

The Stipulation also addressed Respondent's First Amendment rights, specifying that she was not "precluded from publishing any book, article or correspondence which sets forth her understanding of the present status of a law; or expressing her political views and petitioning the government for redress of grievances." Rather, she was only "precluded from applying that understanding to another individual's situation without the supervision of an attorney."

In the final paragraph of the Stipulation, Respondent agreed that the Court issue an injunction prohibiting her from engaging in the practice of law. Upon submission of the Stipulation, the PDJ conducted a hearing to determine whether Respondent understood its terms. Finding that Respondent had signed the Stipulation knowingly and voluntarily, the PDJ issued a Recommendation to Accept Stipulation[7] to the Court on October 5, 2001. In his Recommendation, the PDJ specifically determined that Respondent "recognized that her prior conduct was unlawful" and that she was aware that violation of the terms of any resulting order of injunction could result in contempt proceedings, fines, and imprisonment.

[7] Exhibit 1, Recommendation to Accept Stipulation.

On October 25, 2001, the Court accepted the PDJ's Recommendation, thus accepting the Stipulation and making it "THE ORDER OF THIS COURT."[8] The People have brought the present action for contempt, 04SA093, on allegations that Respondent violated the Stipulation and thereby an order of the Court, by her subsequent engagement in the unauthorized practice of law.

This case arises out of Respondent's participation in two dependency and neglect matters in Fremont District Court ("the district court" or "the court"), and a § 1983 action she filed in federal court on behalf of another individual.

A. The KM Matter (Fremont District Court)

The mother of an allegedly dependent and neglected child, KM was a respondent in a dependency and neglect matter in the district court, case number 02JV097. Rocco Meconi represented the Fremont County Department of Human Services ("FCDHS"). After a temporary custody hearing on May 1, 2002,[9] the district court granted KM's request for a court-appointed attorney. Accordingly, on May 3, 2002, the court appointed Daniel Kender to represent KM.[10] On or about September 24, 2002, Mr. Meconi filed a motion for the termination of KM's parental rights.[11]

On January 6, 2003, KM signed a Colorado Statutory Power of Attorney ("Power of Attorney") in favor of Respondent.[12] This document has the appearance of a form, containing blanks filled with specific information, such as KM's name. It looks very similar to the power of attorney forms submitted by Respondent in 01SA136. This Power of Attorney gives Respondent broad powers to handle all of KM's affairs, and is to continue even if KM becomes disabled, incapacitated or incompetent. However, one portion of the document, in a font distinct from the majority of the rest of the text, singles out Respondent's power with respect to KM's claims and litigation (citing C.R.S. § 15-1-1313). Through this portion of the document, KM specifically states that Respondent has the authority "[t]o act in my stead regarding my Dependency and Neglect case # 02-JV-97[.]"[13]

On January 31, 2003, Respondent called Mr. Kender to inquire about

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[8] Exhibit 1, Order of Court.
[9] Exhibit 5(a).
[10] Exhibit 5(b).
[11] Exhibit 5(c).
[12] Exhibit B.
[13] The portion continues: "...including but not limited to unlimited access to all records, documents, recordings, and any other documentation pertaining to this case; and to speak in my stead or on my behalf with any caseworkers, supervisors, Guardians ad litem, CASAs, and any other parties, service providers, officers of the court, or administrators involved in the case or who have knowledge of the case; and said parties, service providers, officers of the court, or administrators are hereby authorized to speak with my agent about any and all issues and information that they have knowledge of or is in their possession."

KM's case and left a message with a return phone number.[14] This number is the same number as that found on the letterhead for the American Family Advocacy Center ("AFAC").[15] Mr. Kender did not return Respondent's call because he did not know her and was not inclined to discuss a highly confidential matter (the representation of a respondent mother in a dependency and neglect action), with a stranger.

On or about February 21, 2003, Respondent sent a letter to Mr. Kender via fax and on AFAC letterhead.[16] In this letter, Respondent advised Mr. Kender that she was contacting him as "an agent for [KM]" based upon the Power of Attorney." In the letter, Respondent asserted: "[KM] reports that her legal interests may not have been adequately represented and drastic action is needed immediately to protect her rights to parent her children." This letter also contained a "directive" from Respondent to Mr. Kender, to file the attached requests for admissions "no later than next Tuesday." She further advised Mr. Kender that "[w]e have had great success using admissions in the past." Finally, Respondent directed Mr. Kender to consider the communication privileged and "tell nobody" about her "association" with KM, unless prepared to vigorously defend KM's constitutional rights under the First Amendment. The requests for admissions are nearly six pages long, and are directed to the caseworker, guardian ad litem, and the West Central Mental Health Center ("WCMHC"). The requests ask these parties to admit certain legal statements and facts. The requests contain both case-specific (names) and non-case-specific ("the mother") language. Mr. Kender ignored this letter, as he did the Respondent's telephone call on January 3, 2003 concerning KM's case.

On March 3, 2003, without notice to Mr. Kender, KM filed *pro se* Requests for Admissions in 02JV097.[17] These requests were directed to WCMHC, Guardian Ad Litem Anna Owen Hall, and FCDHS. With few exceptions, the requests filed by KM are identical to the requests that Respondent sent to Mr. Kender on February 21. They match, word for word and paragraph for paragraph. Notably, even the same peculiarities are present. For example, in both requests, WCMHC is asked to admit the same issue (that the child's mother hasn't been allowed to provide treating professionals with the child's accurate history) twice, once in paragraph five and again in paragraph seven.

On March 6, 2003, without notice to Mr. Kender, KM filed a *pro se* Motion for Clarification of Effective Assistance of Counsel in 02JV097.[18] This pleading begins by asking the court to advise her concerning whether "court-

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[14] Exhibit 3.
[15] *See* Exhibit 4.
[16] Exhibit 4.
[17] Exhibit 5(e). The PDJ notes that these were not the first *pro se* pleadings KM filed without the assistance of Mr. Kender. *See* Exhibit 17.
[18] Exhibit 5(d).

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appointed counsel shall present a vigorous defense for the respondent parent?" Thereafter, the pleading lists 27 other specific questions about a lawyer's duty to a client. The pleading also contains a section entitled "Points of Law," which claims that KM has not received effective assistance of counsel in violation of her due process rights. KM states that her "court-appointed counsel has been inadequate and ineffective in the extreme" and has refused her "numerous requests for contested hearings and repeated demands to rebut the falsified reports and statements presented by the Department of Human Services (DHS)." However, the pleading also says that KM is willing to work with Mr. Kender as long as he "consult[s] with an outside agency to help prepare an effective defense." On March 7, 2003, the district court declined to answer KM's inquires.

The PDJ finds that there is no evidence to show that Respondent directly advised KM in her dependency and neglect case. Instead, Respondent often worked through Mr. Steve Labrue, KM's mother's boyfriend. Mr. Labrue testified that he assisted KM in drafting the Request for Admissions and the Motion for Clarification of Effective Assistance of Counsel in 02JV97. He stated that he assembled documents from various websites, including Respondent's, and discussed the pleadings with the KM before she filed them. He claims that he did not, however, confer with Respondent concerning these pleadings. For the reasons elaborated below in Section III.A.2., the PDJ does not find credible Mr. Labrue's contention that he drafted the pleadings rather than Respondent.

On March 7, 2003, Mr. Meconi filed a Motion for Protective Orders on behalf of FCDHS.[19] The motion requested the district court to strike KM's *pro se* pleadings, pointing to the inherent problems when two adversaries can speak for the same party. Further, Mr. Meconi argued that KM's requests for admissions "reflect a mismatch of opinions and conclusions that have added together in some haphazard form. The assumption would be that [KM] is receiving some very poor legal advice from some private source, perhaps some parents' rights group." The motion also asserted that the *pro se* filings were argumentative and attempted to discuss issues that were not before the court. In response to the Mr. Meconi's motion, the court struck KM's *pro se* requests for admissions.[20]

On March 17, 2003, Mr. Kender received a five-page fax from KM.[21] The fax contains instructions on how Mr. Kender should handle her case. The first paragraph begins: "Since I have not abused/neglected . . . the child, I do not see the need to comply with a case plan/treatment plan." The fifth paragraph states: "I have hired Suzanne Shell [Respondent], and [sic] expert consultant from the American Family Advocacy Center. I direct you to consider her part of

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[19] Exhibit 5(f).
[20] Exhibit 5(a).
[21] Exhibit 6.

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my legal team and to use her expertise to assist you in your fight for my right to utilize their services." KM then continues by requesting that Mr. Kender withdraw from her case if he refuses to work with Respondent "in presenting the most aggressive defense." Further, in paragraph 25, KM commands Mr. Kender to give her time to consult with her "advocates" before signing any document, and urges him to forward copies of documents to AFAC "for them to advise me or you as to changes or anything else." The fax also states that KM requires Mr. Kender to "consult" with AFAC, as well as "follow the instructions given you by these people." In addition, KM authorizes the release confidential information to AFAC "so that they can help you prepare my defense." Also in the March 17 fax, KM demands that Mr. Kender contest findings and make objections, and states her refusal to participate in classes, evaluations, and treatment conducted by providers not of her choosing.

Mr. Kender believes that a good attorney-client relationship had existed between himself and KM prior to Respondent's involvement in the case. Mr. Kender feels that this set of 41 directives symbolized a dramatic shift in their relationship. He nevertheless continued to represent KM throughout the dependency and neglect proceedings.[22] The PDJ also observes a shift in KM's attitude of cooperating in the treatment plan following Respondent's involvement in the case. Prior to Respondent's involvement, KM consistently expressed that she was attempting compliance with the treatment plan adopted by the court on May 24, 2002, [23] at least "to the best of her limited abilities."[24] For example, in one pleading, KM represented that she had made efforts to establish and maintain a stable, safe home for her child.[25] However, after Respondent became involved, KM expressed some unwillingness to follow the treatment plan designed to reunify her with her child.[26] On April 11, 2004, after a trial on the issue, the district court entered an order terminating the parent-child relationship between KM and her child.

KM filed a *pro se* letter to the court on April 17, 2003, requesting the court to appoint an attorney for appeal purposes.[27] The PDJ notes the striking difference in writing style, particularly with respect to spelling and grammar, between the April 17 letter and the *pro se* motions previously discussed in this

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[22] Mr. Kender was permitted to withdraw from representation on April 30, 2003, after the district court deemed the case "closed."
[23] Exhibit 5(b), Order and Decree of Adjudication and Disposition.
[24] Exhibit 17, Verified Motion and Affidavit for Citation for Contempt of Court, filed with the district court on November 15, 2002; Exhibit 17, Letter to the Court, received by Mr. Kender on March 12, 2003.
[25] Exhibit 17, Response to Guardian Ad Litem's Motion for Reconsideration of Continuance and Request for Expedited Ruling, filed with the district court on December 12, 2002.
[26] *See* Exhibit 6.
[27] Exhibit 17, document 001883.

Report.[28] Ultimately, the Court of Appeals affirmed the termination of KM's parental rights.

B. The AF Matter (Fremont District Court)

AF was also a respondent mother in a dependency and neglect matter, case number 03JV003. Mr. Meconi represented FCDHS in that case, as well. At a shelter hearing on January 9, 2003, the district court appointed Mr. Kender to represent AF.[29] On February 3, 2003, AF signed a Power of Attorney in favor of Respondent.[30] This document, while it looks different from KM's Power of Attorney, also has the appearance of a form. Respondent's name is an integral part of the form rather than a filled-in blank. The Power of Attorney gives Respondent the same broad powers to handle AF's affairs, is not limited in any manner, and is to continue even in the event of AF's disability, incapacitation, or incompetence. The document's particular focus is Respondent's authority with respect to claims and litigation. Apparently, Respondent had told AF that the Power of Attorney was for the sole purpose of gathering and sharing information between the court, Mr. Kender, and Respondent.[31]

On or about February 25, 2003, Respondent sent a letter on AFAC letterhead to Mr. Kender, concerning AF's case.[32] In this five-page letter to which AF's Power of Attorney was attached, Respondent notifies Mr. Kender that AF had "engaged [her] as an expert consultant." After directing Mr. Kender to treat any communication between them as confidential and not to reveal her "association" with AF to anyone, Respondent provides Mr. Kender with what she describes as "information and instructions" on AF's case. Respondent states that advising AF to cooperate will not be acceptable. She asserts that she will provide "all the legal arguments and documentation you require, but that will be useless if you fail to make the necessary arguments in court." Respondent then gives Mr. Kender seven separate directives for AF's case, telling him that he will need to file certain documents and motions, raise certain issues, make certain arguments, and write certain jury instructions. With respect to one directive, she even writes: "This is not negotiable." The letter directs Mr. Kender to obtain sample admissions for AF's case at "http://www.profane-justice.org/admissions.pdf"[33] and requests that she

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[28] The April 17 letter reads as follows: "Letter to ask for a serten atterny be apoited for the appeal I Katherine M Montoya ask that ernie marquze be apoited as my atterny for my appeal on the termation of my perantal rights ."

[29] Exhibit 8(a).

[30] Exhibit A.

[31] Exhibit 9(a) (cross-examination of Ms. Korn).

[32] Exhibit 7(a).

[33] Respondent's counsel specifically invited the PDJ to compare the admissions found on this website with the admissions filed in KM's case. However, the PDJ notes that the admissions (as well as all the links at the profane-justice website) were inaccessible. The website displayed

review the admissions before they are filed. Respondent also writes that AF will oppose any motion he might make to withdraw from the case. In closing, Respondent apologizes for the abruptness of the letter, stating that she has "a very large caseload." Mr. Kender ignored this letter from Respondent, as he did the letter concerning KM's case.

On April 14, 2003, AF filed five *pro se* documents in 03JV003: a Declaration of Facts, a Notice to the Court Regarding Court Appointed Counsel, a Motion to Return Child to Mother, a Motion for Clarification of Effective Assistance of Counsel, and a Points of Law.[34] While these documents contained his name in the caption, Mr. Kender was unaware that AF had filed them. The Declaration of Facts is a 14-page response to the Shelter Report and the process in general. It contains facts and admissions that could be used against AF. The Notice to the Court Regarding Court Appointed Counsel concerns what AF perceives as deficiencies in Mr. Kender's representation, including that he "will not even consider presenting a vigorous defense." The Motion to Return Child to Mother contains argument and legal authority for the return of AF's child. Much of the same language is present in all of the motions (ex: allegations of the denial of due process) and is strikingly similar to the language in KM's *pro se* motions. Most telling, however, are the Motion for Clarification of Effective Assistance of Counsel and the Points of Law. With two minor exceptions[35] and a few miniscule grammatical differences, these pleadings are identical to the Motion for Clarification of Effective Assistance of Counsel containing points of law filed in KM's case. They match perfectly, word for word and paragraph for paragraph.

On April 16, 2003, Mr. Meconi filed a Motion to Add Special Respondent, pursuant to C.R.S. § 19-3-503(4).[36] This motion requested the court to add Respondent as a "special respondent" in 03JV003, on the basis of her participation in the case. The limited purpose for adding Respondent, put forth by Mr. Meconi, was to allow the court to enter an order preventing her from being involved in the proceedings (i.e. act as counsel for AF or otherwise engage in the unauthorized practice of law). In the motion, Meconi states, "[u]pon information and belief, unless deterred by this court, the proposed Special Respondent will continue to engage in conduct which is detrimental to the best interest of the child." On April 25, 2003, Respondent filed suit against Mr. Meconi and others in federal court, requesting, *inter alia*, that the parties be enjoined from adding her as a special respondent in AF's case.

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the following message: **Forbidden** You don't have permission to access /admissions.pdf on this server.

[34] Exhibits 8(b)-(e) and 8(l).

[35] AF's Motion for Clarification eliminates question 16 in KM's Motion for Clarification. Also, one sentence in the first paragraph under Points of Law is different in each case.

[36] Exhibit 8(f).

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As indicated in a Status Conference Order,[37] on or about April 17, 2003, Mr. Kender advised the court that he was being prevented from adequately representing AF, as a result of interference by Respondent and AF's mother, Christine Korn, over whom Respondent had power. Mr. Kender indicated that he had been unable to communicate with AF. Also, Respondent told Mr. Kender that she was controlling the litigation. Mr. Kender felt that he could not represent AF as a result of the undue influence Respondent and Ms. Korn were exerting over her. Shortly thereafter, on May 5, 2003, Mr. Kender was allowed to withdraw from his representation of AF, as their relationship had become unproductive.[38]

Considering AF's diminished mental capacity, the district court determined that it was both appropriate and necessary to appoint a guardian ad litem (Daniel Slater) on her behalf. After doing so, the court held a hearing on the Motion to Add Special Respondent on April 29 and May 5, 2003. Both AF and Ms. Korn testified. During the hearing, the district court made a number of findings relevant to the present action.[39] First, with respect to AF's *pro se* pleadings, the court determined that AF had a limited understanding of the documents and did not author them. Rather, they were the result of a collaboration between Ms. Korn and Respondent. The court characterized Respondent's actions as an effort to control the litigation and AF as a mere "puppet" in the case. Second, the court stated that Respondent and Ms. Korn were unfamiliar with what would help and harm AF's legal interests, and that their actions were both disruptive and contrary to their stated goal (a determination that AF's child was not dependent and neglected). Third, the court found that Respondent was offering legal advice, drafting legal documents, and attempting to direct AF, "who is not capable of assessing the nature of that direction." Ultimately, the court granted Mr. Meconi's motion, adding Respondent as a "special respondent" in 03JV003.

On May 9, 2003, *nunc pro tunc* May 5, 2003, the district court issued a written order.[40] Thereby, the court ordered Respondent to stop providing legal advice to AF, notwithstanding Respondent's characterization of her communications with AF. In its findings, the court stated,

> Suzanne Shell [Respondent], in the guise of acting as the agent for [AF] pursuant to a power of attorney given to her by [AF], has essentially been providing legal advice to [AF]. [Respondent] is not an attorney. Her efforts have not been productive for [AF] and indeed have created problems for [AF] that may make

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[37] Exhibit 8(g).
[38] Exhibit 9(b).
[39] Exhibit 9(b).
[40] Exhibit 8(k).

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> [AF]'s defense to the petition as filed by the People more difficult . . . Reasonable efforts to avoid out-of-home placement have been made by the Fremont County Department of Human Services but the same is necessary at this time.

Thus, the PDJ finds that AF's refusal to adhere to a treatment plan, contrary to Mr. Kender's advice but consistent with Respondent's statements, has had a detrimental effect on the reunification of AF with her child.

On May 5, 2003, Respondent filed a Motion and Affidavit for Change of Judge Pursuant to Rule C.R.C.P. 97.[41] Respondent sought to disqualify the district court judge who ordered that she be made a special respondent and thereby subject to the court's orders. In this motion, Respondent claimed that the district judge was not impartial because of her "extreme aversion to [Respondent] and her work."

C. Federal 1983 Action (U.S. District Court for the District of Colorado)

On April 25, 2003, Respondent filed a Complaint and Motion for Declaratory and Injunctive Relief and Damages[42] in the United States District Court for the District of Colorado "(the federal district court" or "the federal court"), case number 03-RB-0743. Respondent named herself and AF as plaintiffs. Respondent named eight defendants, including Mr. Meconi, FCDHS, Mr. Kender, Ms. Hall Owen, and the District Courts of Fremont County.[43] Respondent filed this action *pro se* and as agent for AF, citing the Power of Attorney as authority to do so.[44] The Complaint contains seven causes of action on behalf of Respondent and AF. In the Complaint, Respondent alleged that the defendants, under color of law, denied the plaintiffs' constitutional rights. Specifically, Respondent claimed violations of their freedom to associate, right to contract, freedom of the press, and due process rights. As to herself alone, Respondent also made a claim of viewpoint discrimination. In the "Named Plaintiffs" section, Respondent described her role in 03JV003 as a consultant hired by AF to assist with the "preparation and presentation of her case." Further down in the Complaint, Respondent wrote that she gave Mr. Kender "instructions with regard to his representation of [AF]." However, Respondent later claims that her only participation in AF's case was to gather information for use in a documentary.

Also on April 25, 2003, Respondent filed an Emergency Motion for

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[41] Exhibit 8(j).
[42] Exhibit 12(a).
[43] The other three defendants were Steve Clifton (director of FCDHS), Dawn Rivas (caseworker assigned to AF's case), and Todd Hanenberg (Rivas' supervisor) .
[44] Exhibit 12(a); Exhibit 9(a) (cross-examination of Ms. Korn).

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asking the federal court to allow her signature on that pleading to serve as her signature on the Complaint in 03-RB-743. In the pleading, AF stated, "[i]t was my full intention that my power of attorney, extended to Suzanne Shell, on February 3, 2003, should serve to allow Ms. Shell to act in my absence." On June 9, 2003, Ms. Korn filed a Motion to Add Next Friend.[51] This motion, based upon AF's incompetency as a developmentally disabled adult, petitioned the federal court to add Ms. Korn to the action as "next friend" for the purpose of assisting AF in drafting, formatting and filing pleadings.

On June 19, 2003, the federal district court judge affirmed the magistrate's May 14 order and denied Respondent's motion to reconsider.[52] During a hearing on June 25, 2003, the magistrate advised Ms. Korn that she could not represent AF, thus denying her request to be added as next friend.[53] Based upon motions to dismiss filed by the defendants, the magistrate recommended dismissal of the action pursuant to F.R.C.P. 12(b)(1) and (6). On February 26, 2004, the federal district court judge adopted the recommendation, granted the motions to dismiss, and dismissed 03-RB-743 in its entirety.[54] Respondent has appealed in the Tenth Circuit Court of Appeals.

III. ANALYSIS AND CONCLUSIONS OF LAW

The PDJ finds, beyond a reasonable doubt, that Respondent engaged in the unauthorized practice of law in willful violation of the Supreme Court's injunction.

A. Criminal Contempt

Though it finds its source in the common law, C.R.C.P. 107 governs both civil and criminal contempt in Colorado. Contempt is defined to include "disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court." C.R.C.P. 107(a)(1). Thus, contempt is used to enforce court orders. There is only one distinction between civil and criminal contempt: the nature and/or purpose of the penalty. For civil contempt, the sanction is remedial (conditional, for the purpose of ensuring compliance or providing a remedy). C.R.C.P. 107(a)(5). For criminal contempt, the sanction is punitive (fixed and unconditional, for the purpose of punishment). C.R.C.P. 107(a)(4). A punitive sanction may include an unconditional fine, a fixed sentence of imprisonment, or both. *Id.* A punitive sanction vindicates the dignity of the court. *See In re Marriage of Joseph*, 613 P.2d 344 (Colo. App. 1980). By definition, a punitive sanction cannot be suspended based upon the performance or non-performance of future acts.

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[51] Exhibit 12(l).
[52] Exhibit 12(m).
[53] Exhibit 12(n).
[54] Exhibit 13.

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C.R.C.P. 107(e). Direct contempt is committed in the court's presence, C.R.C.P. 107(a)(2), while indirect contempt occurs outside the court's presence, C.R.C.P. 107(a)(3). Because the People request a definite sanction for violations of the October 2001 Order occurring outside the Court's presence, this case is one for indirect punitive contempt.

As a person charged with indirect punitive contempt, Respondent has the presumption of innocence. *See* C.R.C.P. 107(d). The People are required to show, beyond a reasonable doubt, that Respondent's conduct was offensive to the authority and dignity of the Court. *See id.* Essentially, to find contempt, the following elements must be proven:

1) A lawful court order exists;
2) The contemnor has knowledge of and the ability to comply with the order;
3) The contemnor did not comply with the court order; and
4) The contemnor's violation of the court order was willful.

In re Boyer, 988 P.2d 625, 627 (Colo. 1999).

1. Respondent's Knowledge of and Ability to Comply with the October 2001 Order Entered by the Supreme Court

In this case, there is no dispute that Respondent signed the Stipulation and thereby agreed to the resulting October 2001 Order. Thus, there is a valid Supreme Court order to which Respondent is subject and of which Respondent knew. Respondent also has the ability to comply with the October 2001 Order. She need only refrain from the unauthorized practice of law as defined in the Stipulation. Respondent contends that the October 2001 Order is unlawful, arguing that her First Amendment rights are violated. As elaborated below in Section III.C., the PDJ finds that Respondent's constitutional argument is without merit and that the October 2001 Order is lawful.

2. Respondent's Failure to Comply with the October 2001 Order

The October 2001 Order adopts and incorporates the Stipulation signed by both parties. Therefore, the terms of the Stipulation constitute the terms of the October 2001 Order and enjoin Respondent from engaging in the unauthorized practice of law. Several definitions/examples of such conduct are set forth specifically. Respondent admits that the unauthorized practice of law was defined for her in the Stipulation.[55] It is clear from both the law governing the unauthorized practice of law and the plain language of the Stipulation that Respondent violated the October 2001 Order.

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[55] Respondent's Post-Hearing Legal Memorandum, filed with the PDJ on February 3, 2005.

Injunctive Relief, *pro se* and on behalf of AF.[45] The Emergency Motion requested a temporary restraining order to bar the defendants from holding the hearing in 03JV003 on the Motion to Add Special Respondent, and to prevent the defendants from retaliating against AF or her daughter for the federal case. On the same day, the federal court denied the Emergency Motion,[46] stating that the plaintiffs had not met the requirements for the relief sought, "the issue of unauthorized practice of law aside."

On May 9, 2003, the federal district court referred Respondent's case to a federal magistrate.[47] On May 14, 2003, the magistrate issued an order,[48] holding that "notwithstanding the Power of Attorney submitted by [Respondent], and the issue of the unauthorized practice of law aside, [Respondent] cannot represent plaintiff [AF] in this matter, nor may [Respondent] sign pleadings, motions, or other documents in this case on [AF's] behalf." The magistrate then ordered AF to correct the omission of her signature on the Complaint or risk dismissal of her claims.

On May 21, 2003, Respondent filed, *pro se* and as agent for AF, an Objection to Oder [sic] and Motion to Reconsider.[49] Respondent requested the magistrate to reconsider his order requiring AF's signature on the Complaint, which Respondent had filed on behalf of AF. The basis for her request was the Uniform Statutory Form Power of Attorney Act, C.R.S. § 15-1-1301, *et seq.* Respondent argued that this statute unambiguously granted her the authority to file a complaint on behalf of AF. Specifically, the Respondent stated,

> The court has erroneously presumed that [Respondent] is representing [AF in] this matter. [Respondent] hereby states for the record, that she is ***not*** acting in a representative capacity with regard to [AF]. [Respondent's] designation as [AF's] agent under the recognized and properly executed power of attorney, means that [Respondent] is acting in the name, place and stead of [AF], with full authority to act ***as if she were*** plaintiff Fields. The nature of this standing is clearly defined in the language of the Statute and the executed power of attorney . . . ."

(Emphasis in original).

On May 22, 2003, AF filed a Response to Order and Entry of Signature, [50]

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[45] Exhibit 12(b).
[46] Exhibit 12(c).
[47] Exhibit 12(e).
[48] Exhibit 12(f).
[49] Exhibit 12(g).
[50] Exhibit 12(i).

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The Constitution of the State of Colorado gives the Colorado Supreme Court exclusive jurisdiction to define and regulate the practice of law in this state. Colo. Const. art. VI; C.R.C.P. 228. This includes the power to determine what acts do or do not constitute the practice of law and the power to prohibit the unauthorized practice of law. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 312 P.2d 998, 1002 (1957); *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 823 (1982). The Court has stated that "generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising, and assisting him in connection with these rights and duties is engaged in the practice of law." *Denver Bar Ass'n v. P.U.C.*, 391 P.2d 467, 471 (1964). Thus, a non-lawyer normally cannot:

1) Provide legal advice or interpret the law as it may apply to another person's legal matter;
2) Select or draft legal documents on behalf of another person; or
3) Represent another person in any legal transaction or matter.

Id; *Grimes*, 654 P.2d 822; *Conway-Bogue*, 312 P.2d 998 (1957).

The Stipulation also sets forth specifically prohibited activities, which Respondent agreed constitute the unauthorized practice of law when unsupervised by an attorney. Relevant to this action, those activities include:

1) Giving legal advice to another individual;
2) Choosing legal documents on behalf of another individual believing that they are appropriate for that individual;
3) Drafting legal documents on behalf of another individual;
4) Interpreting the law for or applying the law to another individual's situation;
5) Representing another individual in any legal matter.

Solely with respect to the Complaint, the Emergency Motion, and the Motion to Reconsider filed by Respondent in federal court, the evidence is sufficient to support a finding that Respondent violated the October 2001 Order beyond a reasonable doubt. Respondent admits that she drafted these pleadings. Respondent admits that she filed these pleadings on AF's behalf. Therefore, there is no question that:

- Respondent prepared a legal document on behalf of another individual after interpreting and applying the law to that individual's situation;
- Respondent signed a legal document on behalf of another individual; and
- Respondent filed a legal document in court on behalf of another individual.

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Accordingly, there is no question that Respondent engaged in the unauthorized practice of law and directly violated the October 2001 Order.

In mandatory language, Respondent commanded Mr. Kender to represent his clients a certain way. The instructions contained in her letters to Mr. Kender included litigation strategy, positions to be taken, issues to be raised, arguments to be made, motions and other documents to be filed, and the substance of the records to be made. Respondent made it clear to Mr. Kender what, in her opinion, must be done in each case in order for his representation to be effective, stating that anything else would be "unacceptable." Respondent also advised Mr. Kender regarding likely outcomes.[56] Based upon the tone of the letters, the PDJ finds credible Mr. Kender's statement to the district court that Respondent told him she was controlling the litigation.[57] Respondent was giving legal advice to Mr. Kender by counseling, advising, and assisting him in connection with the legal rights and duties of KM and AF. Respondent was interpreting the law for KM and AF, expecting Mr. Kender to apply her interpretation to their situations. This too is the unauthorized practice of law and a direct violation of the October 2001 Order.

Admittedly, there is only circumstantial evidence that Respondent directly counseled KM and AF in legal matters while operating as their "agent." The PDJ finds that Respondent used family members, Mr. Labrue in the case of KM and Ms. Korn in the case of AF, as conduits for her legal advice. However, in-person contact is not required for the provision of legal advice, and the circumstantial evidence is strong. Upon careful consideration of the evidence, the only logical conclusion is that Respondent drafted or chose pleadings for KM and AF, and instructed these mothers or their family members to file them.

In the February 21, 2003 fax to Mr. Kender, Respondent commanded him to file certain requests for admissions, six pages in length, in KM's case by a certain date. When Mr. Kender did not, KM filed nearly identical pleadings *pro se*. Also striking is the fact that lengthy pleadings filed by KM and AF in their respective cases had the exact same content.[58] KM and AF had no connection with Respondent outside the dependency and neglect litigation.[59] They had no connection to each other, other than the fact of Respondent's involvement.

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[56] For example: "I have observed that attorneys who file these motions, etc. often do not have to go to trial. The state will either pull the petition or offer an informal adjustment, usually on the day of trial." Exhibit 7(a).
[57] Exhibit 8(g).
[58] The pleadings are the Motion for Clarification of Effective Assistance of Counsel and Points of Law.
[59] Exhibit 9(b).

Additionally, the substance and tone of the legal demands contained in KM's letter to Mr. Kender are substantially similar to the demands contained in Respondent's letters to Mr. Kender. KM and AF did not understand the pleadings that they filed *pro se*. As the district court found in AF's case, the PDJ finds that Respondent is responsible for the language, the legal issues raised, and the authorities cited in these pleadings. This too is the unauthorized practice of law and a direct violation of the October 2001 Order.

Respondent's overall role in the litigation is apparent from the record. For example, KM's fax to Mr. Kender[60] states that he must allow KM time to consult with Respondent before KM signs any document, he must forward all documents to Respondent for the purpose of advising on changes, and he must follow Respondent's instructions. Based upon the foregoing, it is clear to the PDJ that Respondent's actions violated the plain language of the Stipulation and October 2001 Order, as well as the letter and spirit of the unauthorized practice of law doctrine.

3. Respondent's Willful Violation of the October 2001 Order

Respondent maintains that she believed she was in compliance with the October 2001 Order, and therefore any violation is not willful. The evidence belies this claim. While the parties agreed that she acted in good faith in the matters addressed in the first case, 01SA136, the same cannot be said here. "Willfully" connotes the voluntary and intentional violation of a known legal duty. *Cheek v. U.S.*, 498 U.S. 192, 200 (1991) (prosecution for tax evasion). The PDJ finds that Respondent was aware that her conduct constituted the unauthorized practice of law in violation of the October 2001 Order, and she nevertheless made a conscious choice to engage in such conduct.

Before advocating on behalf of AF and KM, Respondent was familiar with the allegations contained in the petition filed in 01SA136. She willingly signed the Stipulation, acknowledging that the conduct giving rise to that petition constituted the unauthorized practice of law. The Stipulation also contained a plain-language description of specifically prohibited behavior. The allegations in 01SA136 are substantially similar to the conduct established in the present action. For example, both petitions allege that Respondent attempted to instruct attorneys on the representation of respondent parents and both petitions allege that Respondent drafted pleadings for these parents to file *pro se*. Additionally, the words in the Stipulation "cannot draft legal documents" and "cannot represent another individual in any legal matter" have no meaning at all if they do not preclude Respondent from drafting and filing a federal complaint on behalf of AF. Therefore, Respondent cannot claim that when she decided to involve herself in these cases in the manner in which she did, she

[60] Exhibit 6.

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was unaware that doing so would violate the Supreme Court's October 2001 Order.

The interpretations of the law that Respondent has put forth bolster rather than negate a finding of willfulness. First, her argument that the Uniform Statutory Form Power of Attorney Act authorized her actions is disingenuous. Respondent raised the very same issue in 01SA136 by way of a motion to dismiss. After it was fully litigated, the PDJ determined that Respondent's argument lacked merit. Then, in the Stipulation, Respondent admitted that her understanding of statutory powers of attorney was incorrect. Thus, Respondent cannot credibly claim genuine reliance on such a theory. Second, Respondent's claim that the October 2001 Order is unconstitutional and therefore unenforceable shows full knowledge of its contents and a studied conclusion, rather than an innocent mistake. *See Cheek*, 498 U.S. at 206. Those "who 'willfully' refuse to comply with the duties placed upon them by the law . . . must take the risk of being wrong." *Id.*

Finally, Respondent seems to have attempted to conceal her actions. She generally worked through other family members or friends, who in turn put pressure on KM and AF to follow her advice. In Respondent's letter to Mr. Kender concerning AF's case, she warns Mr. Kender not to reveal her association with AF to anyone. In Respondent's letter to Mr. Kender concerning KM's case, Respondent directs him not to tell anyone about her association with KM unless prepared to "vigorously defend" KM's First Amendment rights. KM's fax to Mr. Kender, which Respondent appears to have drafted, directs Mr. Kender to fight for KM's right to utilize Respondent's services.[61] These statements lead the PDJ to believe that Respondent knew her actions were unlawful under the October 2001 Order, but intended to put forth a constitutional defense if discovered. Accordingly, the PDJ finds that Respondent willfully disregarded the October 2001 Order.

B. Power of Attorney

Once again, Respondent argues that the Statutory Form Power of Attorney Act (C.R.S. § 15-1-1300 *et. seq.* in general and C.R.S. § 15-1-1313 in particular) relieves her of responsibility for the unauthorized practice of law. Case number 01SA136 arose, in part, out of Respondent's use of power of attorney forms to engage in the practice of law. In that case, Respondent filed a Motion to Dismiss[62] based upon the statutory power of attorney, putting forth basically the same argument that Respondent asks the PDJ to consider here. After the issue was fully briefed, the PDJ considered Respondent's argument and squarely rejected it.[63] The Stipulation was the culmination of months of

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[61] Exhibit 6, ¶5.
[62] Exhibit 2.
[63] Exhibit 2.

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negotiations in that case, and ultimately Respondent agreed that her interpretation of the statutory power of attorney was incorrect.[64] Nevertheless, Respondent asserted the same argument in federal court, in her Motion to Reconsider.[65] The federal court also determined that Respondent's argument lacked merit. The PDJ finds that Respondent's use of power of attorney forms has not changed substantially. However, despite rulings to the contrary, Respondent maintains that the statutory powers of attorney authorize her actions. Because this issue has been litigated multiple times with respect to Respondent, a brief explanation is all that is warranted.

The PDJ notes that Respondent has attempted to characterize her role under power of attorney in various ways, in an effort to show that her actions are permissible. For example, Respondent has described herself as acting "as agent of" or "on behalf of" or "in the other person's stead." However, it is the character of the act that is the decisive factor in defining the practice of law. *Denver Bar Assoc. v. P.U.C.*, 391 P.2d at 471. Therefore, regardless of how Respondent describes her role, if she was acting in a representative capacity, she was engaged in the unauthorized practice of law. The PDJ concludes that Respondent was acting in a representative capacity with respect to KM and AF.

The Statutory Form Power of Attorney Act does not give Respondent the authority to essentially act as an attorney. In accordance with the Colorado Constitution, defining the practice of law and prohibiting the unauthorized practice of law is a judicial function. *Conway-Bogue Realty*, 312 P.2d at 1002. Thus, in this area, the Supreme Court's jurisdiction is exclusive and its power is plenary. *Denver Bar Assoc. v. P.U.C.*, 391 P.2d at 470; C.R.C.P. 228. The legislature cannot change the definition of the practice of law, and any legislation that might alter the Court's rules regarding the practice of law is "abortive." *Denver Bar Assoc. v. P.U.C.*, 391 P.2d at 470. Therefore, the statutory power of attorney conveys authority to act except to the extent that it might permit the unauthorized practice of law. And prosecution for the unauthorized practice of law is warranted even when the respondent has relied on power of attorney forms. *E.g. Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111 (Colo. 1988).

This makes sense on a practical level. The judicial department is charged with the effective administration of justice. In furtherance of this goal, the Court regulates admission to the bar and continually oversees the practice of law, to ensure "that the public obtains legal advice only from qualified and competent counsel." *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d at 823-24. If the legislature could determine that the only necessity to practice law is a power of attorney, it would substantially hinder the judicial department's ability to fulfill its role. *Id.* at 823.

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[64] Exhibit 2.
[65] Exhibit 12(g).

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It is true that under *Faretta v. California*, 422 U.S. 806 (1975), individuals have the constitutional right to represent themselves in legal matters and to appear *pro se* in court. However, this right does not extend to those who wish to act in a representative capacity under power of attorney. *E.g. Office of Disc. Counsel v. Coleman*, 724 N.E.2d 402 (Ohio 2000) (highlighting the distinction between attorney-in-fact and attorney-at-law). A non-attorney cannot engage in what amounts to the practice of law, regardless of whether she procures the consent of the other individual.

C. First Amendment

Notwithstanding the fact that Respondent agreed to the entry of the October 2001 Order, Respondent claims that the injunction from practicing law is an unconstitutional violation of her First Amendment rights of free speech and free association.

The First Amendment does protect Respondent's right to express and disseminate her opinions on the child protection system. The First Amendment does protect Respondent's right to file a complaint in court on her *own behalf* for the redress of her *own* grievances. However, the First Amendment does not give Respondent the right to practice law without a license. "It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949). The October 2001 Order does not restrict Respondent from using public forums to state her opposition to the dependency and neglect system. However, it does prohibit Respondent from providing legal advice on how to litigate a particular dependency and neglect case. Accordingly, the PDJ finds that the October 2001 Order is constitutional and does not violate Respondent's First Amendment rights.

States have a strong interest in regulating licensed professions, and bear a "special responsibility" for maintaining standards in these professions. *Ohralik v. Ohio St. Bar Assn.*, 436 U.S 447, 460 (1978). This is particularly true with respect to the legal profession, as "lawyers are essential to the primary governmental function of administering justice." *Id.* Under Article VI of the Colorado Constitution, the Colorado Supreme Court has plenary authority to regulate the practice of law. The Court issued the October 2001 Order in this capacity.

It is arguable that the October 2001 Order does not directly regulate speech at all. *S. Christian Leadership Conf. v. Sup. Ct. of the St. of Louisiana*, 252 F.3d 781, 789 (5th Cir. 2001) (as the ability of unlicensed persons to practice law does not exist, restrictions on non-lawyer student members of

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clinics serving in a representative capacity does not directly regulate speech). However, to the extent that the October 2001 Order indirectly discourages speech, the PDJ finds that the First Amendment does not prohibit the Colorado Supreme Court from imposing viewpoint-neutral limits on non-attorneys' involvement as attorneys in the litigation of other individuals. *See id.* at 792.

"Political" speech is the core form of speech protected by the First Amendment. *Ohralik*, 436 U.S 447. "Commercial" speech is afforded only a "limited measure of First Amendment protection." *Flordia Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995). This is because a state retains its ability to regulate harmful commercial activity even though speech may be a part of the activity. *Ohralik*, 436 U.S. at 456. The speech prevented by the October 2001 Order is commercial rather than political, as it addresses the provision of attorney services. *See Cambiano v. Neal*, 35 S.W.3d 792, 796 (Ark. 2000). Providing legal advice to an attorney or client is commercial speech, regardless of compensation or lack thereof. *Id.* at 798 (drawing a distinction between providing legal advice and espousing political views on social issues). Respondent's own statements support the fact that, in the context of the KM's and AF's litigation, her speech is commercial. In her February 25, 2003 letter to Mr. Kender, Respondent says that she is "engaged as an expert consultant by [AF]." In the federal Complaint, Respondent states that AF "hired her" to assist in preparing and presenting AF's case.

The PDJ determines that the October 2001 Order, incorporating Colorado's unauthorized practice of law doctrine, is viewpoint-neutral and directly advances several legitimate and important governmental interests. Restricting the practice of law to licensed attorneys protects the public and preserves the integrity of the legal system. Legal advice given by unqualified persons poses a significant potential for injury to the legal rights and interests of those already facing legal difficulties. Reserving the practice of law for attorneys protects the public from incompetent legal assistance. *Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d at 1116. Attorneys are required to undergo specific training and are subject to regulation by the Supreme Court. They are officers of the court and held to particular standards with respect to their dealings with and representation of clients. Due to these strong state interests, "any abridgement of the right to free speech is merely the incidental effect of observing an otherwise legitimate regulation." *Lawline v. ABA*, 956 F.2d 1378, 1386 (7th Cir. 1992). Therefore, while Respondent may express her opinions on the child protection system generally, she may not do so in the context of another individual's litigation.

The October 2001 Order does not implicate Respondent's right to freedom of association. "Collective activity undertaken to provide meaningful access to the courts is a fundamental right within the protection of the First Amendment." *United Transp. Union v. St. Bar of Michigan*, 401 U.S. 576, 585-

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586 (1971). Thus, laypersons have a right to obtain meaningful access to the courts, and a right to enter into associations to effectuate that end. *United Mine Workers v. Illinois St. Bar Assn.*, 389 U.S. 217 (1967). However, no such fundamental right is at issue in the present case, as Respondent has not shown that laypersons will be deprived meaningful access to the courts if she is not allowed to practice law. *See Lawline v. ABA*, 956 F.2d at 1387 (no showing that laypersons will be deprived of meaningful access to the courts if lawyers are unable to form partnerships with non-lawyers). In fact, the PDJ deems that quite the opposite is true. Respondent made KM's and AF's access to the courts less meaningful, as she made representation by the attorney provided to assist them difficult. Indeed, the ability to work as an attorney is a privilege, not a right.

Lawyers routinely engage in activities that are protected by the First Amendment and cannot be prohibited by non-lawyers. *Lawline v. ABA*, 956 F.2d at 1386. However, Respondent has made no claim that the unauthorized practice of law, as defined in the Stipulation and approved by the October 2001 Order, has been given an overbroad interpretation. Nor has Respondent given the PDJ any indication of which specific aspects of the October 2001 Order violate her constitutional rights. Rather, Respondent seems to undertake a general attack on the rules regarding the unauthorized practice of law, including the proscription on signing and filing legal documents on behalf of another person. The PDJ declines Respondent's invitation to declare the entire unauthorized practice of law doctrine unconstitutional.

Respondent claims that the October 2001 Order and this prosecution are the result of retaliation in response to both her viewpoint and her First Amendment-protected activities. This claim must also fail. First, while the motivation of a state actor might transform a permissible action into a violation of the First Amendment, *S. Christian Leadership Conf. v. Sup. Ct. of the St. of Louisiana*, 252 F.3d at 792, the PDJ determines that Respondent has presented no evidence of retaliation. On the record before the PDJ, there is absolutely nothing to indicate a malicious motive on the part of the Supreme Court or the Office of Attorney Regulation Counsel. There is absolutely nothing to indicate any kind of scheme or conspiracy involving participants in Fremont County dependency and neglect cases. Thus, there is no proof of retaliation. *See id.* Second, the PDJ determines that Respondent's First Amendment-protected activities (those that do not constitute the unauthorized practice of law) are unaffected by either the October 2001 Order or this prosecution. Respondent may still engage in media activities, including public speeches, writings, films, and *informational* websites. Respondent may petition her elected representatives and the legislature as a whole in an effort to change the laws regarding dependency and neglect. And Respondent is free to redress *her own* grievances in court.

Conclusion

The PDJ, the Supreme Court, and the Fremont District Court have all advised Respondent that her conduct constitutes the unauthorized practice of law. The PDJ, the Fremont District Court, a federal magistrate, and the U.S. District Court for the District of Colorado have all advised Respondent that she cannot rely on a power of attorney to essentially represent the legal interests of others. This is so regardless of how she characterizes her representation of litigants. Most recently, when a federal magistrate ordered that AF's case would be dismissed unless AF signed the pleadings, Respondent filed another pleading "correcting" the magistrate's "error." As she explained to the federal magistrate, she was not representing AF but had full authority to act "as if she were" AF.

In spite of these verbal gymnastics, Respondent knows that her conduct is unlawful and a violation of the rules regarding the unauthorized practice of law. She acknowledged the same in the Stipulation she signed and filed in 01SA136. However, in the face of repeated admonitions and her own recognition of the impropriety of her actions, Respondent has willfully ignored the October 2001 Order and continued her crusade. There is no question that Respondent passionately believes that what she is doing serves a just cause. Nevertheless, through her zealous advocacy she is practicing law and driving a wedge between respondent parents and the licensed attorneys provided to assist them. In doing so, she has negatively impacted the legal interests of those she intends to help.

Respondent is an intelligent woman who is committed to exposing what she believes to be abuses in our judicial system, including actions by the lawyers and agencies involved in dependency and neglect cases. She claims that the present action represents retaliation against her, for her viewpoint on the child protection system and for her involvement with parents and grandparents in dependency and neglect matters.[66] In this Report, the PDJ takes no position whatsoever on Respondent's views and opinions, on the administration of the child protection system in Fremont County, on the actions of FCDHS or any other agency, on the propriety of the dependency and neglect actions brought against KM and AF, or on the quality of Mr. Kender's representation of KM and AF. The PDJ reiterates that the attorney regulation system in no way seeks to inhibit Respondent in her capacity as a documentary film producer, or to prevent her from exposing government abuses and violations.

The sole issue is whether Respondent has willfully violated a previous order of the Court, an order to which Respondent freely and voluntarily agreed. In issuing such an order, the Supreme Court is rightfully concerned about

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[66] Respondent's Post-Hearing Legal Memorandum, filed with the PDJ on February 3, 2005.

protecting the public from poor legal advice given by those who are not trained in the law and who have not met the rigorous requirements for admission to the bar. This case demonstrates the detrimental effects that the unauthorized practice of law can have on the legal rights and obligations of the unsuspecting and trusting. KM and AF faced an incredible loss – the loss of a child. As the Fremont District Court found, Respondent's involvement has had an adverse effect on these mothers' ability to keep their children.

The PDJ concludes that the imposition of the requested fine is necessary to vindicate the dignity of the Supreme Court and to protect the citizens of Colorado. Thus far, the admonitions of the PDJ, the Fremont District Court, the U.S. District Court for the District of Colorado, and the Colorado Supreme Court have been to no avail. Respondent has not altered her conduct and continues to assert the same justifications for such conduct. She has now appealed the dismissal of the federal § 1983 action brought on behalf of AF. The PDJ is of the belief that Respondent considers the only true interpretation of the law to be her own. The PDJ considers it likely that Respondent will continue to disregard court rulings and orders contrary to her assessment of the law.

IV. RECOMMENDATION

The PDJ finds beyond a reasonable doubt that Respondent is guilty of indirect punitive contempt by willful violation of a lawful order entered by the Supreme Court in case number 01SA136 on October 25, 2001.

The PDJ as Hearing Master therefore recommends, to vindicate the dignity of the Court, that the Colorado Supreme Court issue an order:

1. Finding Respondent in contempt for engaging in the unauthorized practice of law in violation of a Supreme Court order;

2. Directing Respondent to pay the punitive sum of $6,000 to the Colorado Supreme Court; and

3. Assessing against Respondent the costs and expenses of these proceedings pursuant to C.R.C.P. 237(a), in the amount of $780.81 for costs[67] and $3,585.00 for attorneys fees[68] payable to the Office of Attorney Regulation Counsel, and in the amount of $228.33 for court reporter fees payable to the Office of Attorney Regulation Counsel.

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[67] Exhibit 14.
[68] Exhibit 15.

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DATED THIS 24TH DAY OF FEBRUARY, 2005.

William R. Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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

Paul Grant — Via First Class Mail
Respondent's Counsel

Susan Festag — Via Hand Delivery
Colorado Supreme Court

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SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202	RECEIVED MAR 1 4 2005 REGULATION COUNSEL JC 3/21
Petitioner: THE PEOPLE OF THE STATE OF COLORADO, **Respondent:** SUZANNE SHELL.	Case Number: **04SA093**

ADDENDUM TO REPORT PURSUANT TO C.R.C.P. 239(a)

On January 25, 2005, the People filed an Amended Statement of Costs with the Presiding Disciplinary Judge ("PDJ"), showing an additional $815.81 incurred in conjunction with this proceeding. These additional costs were not reflected in the PDJ's Report issued on February 24, 2005. Respondent did not file any objection or response to the Amended Statement of Costs.

The PDJ as Hearing Master therefore recommends that the Colorado Supreme Court issue an order assessing against Respondent additional costs and expenses of these proceedings in the amount of $815.81, for a total of $1,596.62 in costs pursuant to C.R.C.P. 237(a), payable to the Office of Attorney Regulation Counsel.

DATED THIS 14TH DAY OF MARCH, 2005.

William R. Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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