

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 8, 2017 CASE NUMBER: 2016SA251
Original Proceeding in Unauthorized Practice of Law, 2016UPL024	
Petitioner: The People of the State of Colorado, v. Respondents: Brian Costello and Costello Consultants, LLC, a Colorado limited liability company.	Supreme Court Case No: 2016SA251
ORDER OF INJUNCTION	

Upon consideration of the Report of Hearing Master under C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that Respondent, BRIAN COSTELLO and COSTELLO CONSULTANTS, LLC, a Colorado limited liability company, shall be, and the same hereby is, ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado.

IT IS FURTHER ORDERED that Respondent, BRIAN COSTELLO and COSTELLO CONSULTANTS, LLC, a Colorado limited liability company, are assessed costs in the amount of \$514.53. Said costs to be paid to the Office of Attorney Regulation Counsel, within thirty (30) days of the date of this order.

IT IS FURTHER ORDERED that Respondent, BRIAN COSTELLO and COSTELLO CONSULTANTS, LLC, a Colorado limited liability company, pay Restitution to Timothy and Theresa Hoff in the amount of \$11,200.00 plus statutory interest.

IT IS FURTHER ORDERED that a fine be imposed in the amount of \$500.00.

BY THE COURT, JUNE 8, 2017.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<hr/> Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondents: BRIAN COSTELLO and COSTELLO CONSULTANTS, LLC, a Colorado limited liability company	<hr/> Case Number: 16SA251
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

The Office of Attorney Regulation Counsel (“the People”) allege that Brian Costello and Costello Consultants, LLC (collectively “Respondents”) engaged in the unauthorized practice of law by attempting to assist a pair of homeowners in a foreclosure proceeding. William R. Lucero, the Presiding Disciplinary Judge (“the PDJ”), finds that Respondents did indeed practice law by providing case-specific legal advice to the homeowners, by holding themselves out as the homeowners’ legal representatives, and by purporting to exercise legal judgment and discretion on the homeowners’ behalf. The PDJ recommends that the Colorado Supreme Court enjoin Respondents from the unauthorized practice of law and order them to pay a fine, restitution, and costs.

I. PROCEDURAL HISTORY

Kim E. Ikeler, on behalf of the People, filed a “Petition for Injunction” against Respondents on September 16, 2016, alleging they engaged in the unauthorized practice of law. The Colorado Supreme Court issued an “Order and Rule to Show Cause” on September 21, 2016. Respondent Costello responded to the petition on behalf of both Respondents on October 18, 2016. That same day, the Colorado Supreme Court referred this matter to the PDJ for “findings of fact, conclusions of law, and recommendations.”

The PDJ held a scheduling conference on December 13, 2016. Ikeler appeared for the People, and Respondent Costello appeared pro se and on behalf of Costello Consultants. At that conference, the PDJ granted Respondent Costello’s request to represent Respondent Costello Consultants in this matter, and the PDJ set a hearing date of March 22, 2017.

At the March hearing, Ikeler appeared in person and Respondent Costello appeared by telephone.¹ The PDJ heard testimony from Karen Radakovich, Marcel Weise,² Christopher Pratt, Theresa Hoff, Timothy Hoff, and Respondent Costello.³ The PDJ admitted the People's exhibits 2, 4-5, and 7-12.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Findings⁴

Respondent Costello, a nonlawyer, is a Colorado resident who operates Respondent Costello Consultants.⁵ Respondent Costello did not present testimony or evidence about his background or work history, except to say that for some time he was the mentee of a man named Jean Keating, who apparently holds himself out on the internet as a legal expert. The evidence shows that Keating espouses legal theories far outside the mainstream.

The People allege that Respondent Costello acted as the legal representative of Timothy and Theresa Hoff in an effort to help them avoid foreclosure on their home in Parker, Colorado. The home's mortgage was held by West Coast Capital Group, Inc. ("West Coast"), a California company of which Marcel Weise is the president. Karen Radakovich, a Boulder real estate lawyer, represented West Coast and Weise.

Radakovich testified that a foreclosure action on the Hoff residence was commenced on March 11, 2016. Under Rule 120, such an action begins with a motion seeking authorization of a foreclosure sale. At the hearing on the motion, the only grounds for borrowers to object to the sale concern the existence of a default and the applicability of the Servicemembers Civil Relief Act.⁶ If no such objection is properly lodged, then a foreclosure sale is authorized, and the public trustee sells the property at a public auction.⁷ The sale of the Hoff's home was originally scheduled for late April 2016, according to Radakovich.

¹ The PDJ previously granted a motion to permit Respondent Costello to appear by telephone. Respondent Costello noted at the beginning of the hearing that by his appearance he was not waiving any rights, remedies, or defenses, either statutorily or procedurally.

² In accordance with an earlier order issued by the PDJ, Weise testified by Skype from California, where he lives.

³ On March 14, 2017, the PDJ accepted the People's proposed trial management order, even though Respondents had not participated in drafting the proposed order. The PDJ noted he would look favorably on any proposed amendments to the order. At the outset of the hearing, the PDJ **GRANTED** the People's unopposed motion dated March 20, 2017, which requested permission to add to the trial management order an exhibit supporting an award of restitution.

⁴ Where not otherwise indicated, the facts are drawn from the testimony provided at the unauthorized practice of law hearing.

⁵ Respondent Costello is the registered agent of Respondent Costello Consultants on the Colorado Secretary of State's website. Ex. 2. At the hearing, Respondent Costello claimed, nonsensically, that the Secretary of State "owns" Respondent Costello Consultants. Based on testimony, including Respondent Costello's admission that he is the only member of Respondent Costello Consultants, the PDJ finds that Respondent Costello operates the company.

⁶ C.R.C.P. 120.

⁷ *Id.*

Sometime that March or April, Respondent Costello met the Hoff's. Respondent Costello testified that Keating had identified various borrowers who were facing foreclosure, including the Hoff's. Acting on Keating's suggestion, Respondent Costello contacted them and offered to help remove their debt. Respondent Costello testified that he told the Hoff's he would merely "connect" them with Keating, who was his mentor and who would do the substantive work on the case. Timothy Hoff remembers Respondent Costello mentioning his relationship with Keating, purportedly a subject matter expert who would prepare the documents to be filed.⁸ According to Timothy Hoff's credible testimony, Respondent Costello advised them that there was no lien on their home to be foreclosed upon and that the foreclosure was illegitimate. Timothy Hoff also recalls that Respondent Costello said he was a "consultant," not an attorney, but that he could file a "claim" on the Hoff's' behalf.

The Hoff's agreed to hire Respondent Costello and paid him a total of \$11,200.00 that April and May.⁹ Respondent Costello testified that he forwarded \$5,000.00 of that sum to Keating and kept the remainder. Timothy Hoff's and Respondent Costello's testimony suggested that at some point, the Hoff's signed a form from the Douglas County assessor's office that authorized Respondent Costello to act as their agent.¹⁰

After his hiring, Respondent Costello contacted Weise, indicating that he was helping the Hoff's to avoid foreclosure. Weise recalls that Respondent Costello held himself out as the Hoff's' authorized "representative," though he never said he was a lawyer. In mid-April 2016, Costello sent Weise a series of emails, asking him to postpone the foreclosure sale in order to do "mediation on a loan mod."¹¹ Weise repeatedly emailed Respondent Costello to ask what his "plan" was—whether the Hoff's meant to reinstate or rather pay the loan.¹² Respondent Costello never directly responded, instead requesting extensions of the sale on multiple occasions.¹³

On April 19, Respondent Costello emailed Weise, saying simply, "You will be properly served under rules of civil procedure." Weise expressed frustration with Respondent Costello's refusal to disclose the Hoff's' plan, suggesting that he contact his lawyer.¹⁴ Respondent Costello soon followed up with a legal disquisition, alleging, among other things:

⁸ Theresa Hoff maintained that Respondent Costello told the Hoff's he, not Keating, would personally do all the work on the case. But the PDJ finds Timothy Hoff's and Respondent Costello's contrary—and consistent—testimony more persuasive.

⁹ Ex. 12.

¹⁰ This form was not entered into evidence.

¹¹ Ex. 10 at 0423.

¹² Ex. 10 at 0422.

¹³ Ex. 8 at 0367-70.

¹⁴ Ex. 8 at 0367-68.

- You and Compass Bank made an unauthorized Material Alternation¹⁵ of the Note by a RUBBER STAMPED INDORSEMENT as the ACCEPTOR/DRAWER under of the Colorado Uniform Commercial Code by Converting the NOTE TO A NON-NEGOTIABLE INSTRUMENT see Definitions and index of definitions – UCC 9-102(65)
- You AS THIRD PARTY DEBT COLLECTORS have and are engaged in Unfair Business Practices under 15 USC § 1692f, including but limited to Racketeering, Money Laundering, Tax Evasion and under CHAPTER 25 – COUNTERFEITING AND FORGERY (§§ 470 to 514)
- YOU AS A THIRD PARTY DEBT COLLECTOR ARE CIVILLY LIABLE TO mR HOFF FOR TRIPLE DAMAGES BASED ON THE ABOVE EVIDENTIARY FACTS OF FRAUD. [Gordon v. Wansey, 21 Cal. 77].¹⁶

Respondent Costello testified that Keating authored this document and the other legal writings quoted below, and that Respondent Costello merely copied and pasted the writings without understanding the contents. The PDJ finds this account likely true as to the lengthy writings,¹⁷ though the PDJ finds it probable that Respondent Costello alone drafted a variety of shorter communications to Weise and others in which he held himself out as the Hoff's legal representative. Notably, even the longer writings bear no indication to readers that they were drafted by anyone other than Respondent Costello.

When Weise once again asked Respondent Costello what the Hoff's plan was, he responded, "My plan is to take you into bankruptcy court under a chapter 7 liquidation and liquidate your ass."¹⁸ Later that day, he told Weise, "I'm going to show that there was never a loan I will also show that you are a third party debt collector and have no standing Moreover, I'm going to file a criminal complaint against you and with the insurance commissioner."¹⁹ He also asserted:

If you truly cared about "satisfying the loan" you'd give me 45 days. Instead you'd rather spend your money paying your attorneys \$500 hour for a few years fighting this. That's exactly what you're going to get. Trust me, my team and I are the best in this country at defending our countrymen from all this corruption and fraud that's taking place in our country by all these law firms and people like yourself.²⁰

¹⁵ In each quotation of Respondent Costello's written products, the PDJ has retained all of the original typographic and other errors, as well as the all-capitals format, without indicating "[sic]."

¹⁶ Ex. 8 at 0362-63.

¹⁷ The PDJ found Respondent Costello's testimony both credible on this point and consistent with the other evidence and testimony. The PDJ does not believe Respondent Costello had the percipience to personally develop the theories advanced in the longer writings, unreasonable though those theories were.

¹⁸ Ex. 8 at 0361. Weise testified that in his experience handling mortgages, Chapter 7 bankruptcies do not release a secured interest in a property, so it did not appear to him that such a bankruptcy filing would in fact help the Hoff's to keep their home.

¹⁹ Ex. 8 at 0360.

²⁰ Ex. 8 at 0357.

After Respondent Costello's continued demands to defer the foreclosure sale, Weise ultimately agreed to postpone the sale for two weeks and told Respondent Costello to direct any future communications to Radakovich.²¹

On May 4, 2016, Respondent Costello emailed Christine Duffy, Douglas County's Public Trustee, indicating that he was looking at a particular deed (presumably the Hoff's) and asking how a company could "legally transfer assignment of deed of trust" when the Public Trustee "has ALL rights" to the property.²² In a separate email sent May 11, Respondent Costello warned Duffy that if she sold the Hoff's property, he would file a claim for breach of fiduciary duty or fraud upon the court.²³

On May 10, Respondent Costello sent Radakovich's assistant and Weiss a twenty-four page "response to foreclosure letter" on Costello Consultants letterhead.²⁴ Respondent Costello signed as "Attorney in Fact" for the Hoff's.²⁵ The allegations in the letter include:

- We are giving you Judicial Notice of the Following Facts and Laws that are not Subject to Reasonable Dispute and are known within the Territorial Limits of the Courts and Statutes and Codes of Colorado and the Colorado Evidence Code § 13-25-106
- TIM D. HOFF and the SPOUSE THERESA J. HOFF ARE INFANT DECEDENTS AND MINORS AS THAT TERM IS DEFINED IN IRM MANUAL IRS manual § 21.7.13.3.2.2 . . . AND THAT THE SIGNATURES ON THE DEED OF TRUST AND PROMISSORY NOTE OF LOAN # 06604587 ARE FORGERIES UNDER § C.R.S.A. § 4-3-308.
- The PROMISSORY NOTE IN THIS TRANSACTION IS NOT A PROMISSORY NOTE OR A NEGOTIABLE INSTRUMENT UNDER C.R.S.A. § 4-3-104 (a) (1)(2)(3) and C.R.S.A. § 4-9-102 (65)²⁶

At the unauthorized practice of law hearing, Radakovich said she understood from this letter that Respondent Costello was advancing arguments for the Hoff's as to why the foreclosure proceeding should not go forward.

Soon thereafter, the foreclosure sale was completed. Afterwards, Radakovich received a call from Respondent Costello and Timothy Hoff. During the call, Respondent Costello expressed surprise that his letter to her had not stopped the sale. She responded that she did not believe the letter provided any valid defense to the foreclosure action. Respondent Costello then told her he planned to file a lawsuit on the Hoff's behalf. According to

²¹ Ex. 8 at 0351.

²² Ex. 9 at 0372.

²³ Ex. 9 at 0371.

²⁴ Ex. 7 at 0059-82.

²⁵ Ex. 7 at 0082.

²⁶ Ex. 7 at 0059, 0061, 0064

Radakovich, she expended a total of a couple of hours on West Coast and Weise's behalf based on Respondent Costello's involvement in the Hoff matter.

On June 21, Respondent Costello sent a letter to Douglas County's risk manager entitled "CLAIM AGAINST CHRISTINE DUFFY."²⁷ The letter, written on Costello Consultants letterhead, stated in part:

TIM HOFF CLAIMS CONTRIBUTION AND INDEMNIFICATION BY PRIMARY ACTIVE LIABILITY IN THE AMOUNT OF 107,867.00 X 3 = 323,601 U.S. DOLLARS + 100,000.00 COURT COSTS AND ATTORNEYS FEES DUE TO THE PRIMARY ACTIVE LIABILITY COMMITTED BY CHRISTINE DUFFY on June 01, 2016 under Colorado uniform fraudulent transfer act as the PUBLIC TRUSTEE of DOUGLAS COUNTY by violating C.R.C.P. RULE 9 PLEADING SPECIAL MATTERS (a)(1) Capacity Conditions Precedent to Foreclosure have not been met²⁸

Respondent Costello also repeated his earlier assertion regarding the Hoff's status as "infant decedents and minors."²⁹ In addition, he alleged that no enforceable "lease contract" existed.³⁰ He closed this letter, like the May 10 letter, by representing that he was the Hoff's "Attorney in Fact."³¹

Christopher Pratt, an assistant county attorney, responded to Respondent Costello on July 18, stating that letter did not appear to implicate the conduct of Douglas County officials and that in any event County employees are immune from suit.³² At the unauthorized practice of law hearing, Pratt testified that he spent about a couple of hours on the Hoff matter as a result of Respondent Costello's involvement, including holding a meeting with the county risk manager and Duffy.

Later on, Respondent Costello offered to help the Hoff's eliminate their automobile loans without any additional charge, but he did not succeed in discharging any such debt. Respondent Costello has not refunded the Hoff's \$11,200.00 payment.

On the morning of the unauthorized practice of law hearing, Timothy Hoff received text messages from Respondent Costello, reading as follows:

When I question you today please make sure you tell truth, because if you don't I will impeach your testimony with my evidence. In my book you are a punk, one who lacks honor in deed, and I'm going to sue you. You knew damn well that Jean did all this work and all I was was the runner for you and Jean.

²⁷ Ex. 4 at 0017.

²⁸ Ex. 4 at 0017.

²⁹ Ex. 4 at 0019.

³⁰ Ex. 4 at 0021.

³¹ Ex. 4 at 0040.

³² Ex. 5.

Sorry, piece of shit, I'm going to sue you and your wife. Now my company has a bad name, unbelievable. If you wanted your money back all you had to do was ask, not throw my company under the bus. You ruined my name, it's all on Google, this case. Anyway, I wish you no ill will, I am just really pissed that you turned on me when my purpose is to stop all this fraud and you know it.³³

Timothy Hoff also testified that Respondent Costello had earlier advised him not to communicate with the People. Respondent Costello conceded that he had recommended that Timothy Hoff “lay low” and had told him that “less is more.”

Respondent Costello testified that he no longer maintains contact with Keating, who stopped returning his calls upon learning of this unauthorized practice of law proceeding. Respondent Costello also said he has come to doubt Keating's legal theories after speaking with his own uncle, a diplomat. He thus argued that there is no need to enjoin him from the further unauthorized practice of law.

Legal Analysis

The Colorado Supreme Court, which has exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Colorado,³⁴ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.³⁵ To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.³⁶

Colorado Supreme Court case law holds that a person engages in the practice of law by acting “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting that person in connection with these rights and duties.”³⁷ In particular, “an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case . . . or holding oneself out as the representative of another in a legal action.”³⁸ Advising clients about legal matters is prohibited because doing so involves the lay exercise of legal judgment or discretion.³⁹

For example, in the *Prog* decision, the Colorado Supreme Court determined that a nonlawyer engaged in the unauthorized practice of law when he drafted various documents

³³ These text messages were read into the record rather than introduced into evidence, so the typographic details may not be reproduced here exactly as they appeared in their original form.

³⁴ C.R.C.P. 228.

³⁵ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982); see also *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007) (“Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons.”).

³⁶ See C.R.C.P. 201-227.

³⁷ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

³⁸ *Id.* at 171 (quotation omitted).

³⁹ *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010).

and pleadings for borrowers to file in a Rule 120 case and later advised and assisted them to file additional court actions.⁴⁰ In that case, the borrowers relied on the nonlawyer for the legal arguments in the filings, yet most of those arguments were not legally valid.⁴¹

Applying the standards set forth above, the PDJ has no trouble concluding that Respondents engaged in the unauthorized practice of law.⁴² Respondent Costello initially practiced law by giving the Hoff's case-specific legal advice about their rights and duties—namely, the advice that there was in fact no lien on their house and that the foreclosure case was illegitimate. Respondent Costello then proceeded to hold himself out as the legal representative of the Hoff's in communications with Weise, Radakovich, and Douglas County employees. In doing so, he repeatedly cited legal authorities and advanced legal claims, thus exercising legal discretion, albeit incompetently.

In defense, Respondent Costello protests that he merely helped with delivery and coordinating tasks and that Keating completed all of the substantive work for the Hoff's. He further asserts that he did not even understand the contents of Keating's writings. This defense lacks merit. Even if the PDJ were to find that Respondent Costello authored none of the writings in question here, the PDJ would still conclude that Respondent Costello effectively adopted Keating's language as his own. The PDJ finds, however, that Respondent Costello likely did write some of the emails to Weise and others on his own. The writings he sent to Weise, Radakovich, and Douglas County bear no indicia that they were created by anyone other than himself. In fact, he specifically referred to himself in at least one of the emails ("my team and I are the best in this country at defending our countrymen from all this corruption and fraud . . .").⁴³ By writing under his own name and letterhead, he explicitly held himself out as the Hoff's' legal representative.

The PDJ briefly addresses several other defenses that Respondent Costello obliquely raised. First, the Douglas County form that ostensibly permitted Respondent Costello to act as the Hoff's' agent could not have authorized him to practice law. The PDJ lacks evidence of the contents of this form, and in any case, conferral of a power of attorney does not permit an unlicensed person to practice law.⁴⁴ In addition, it is no defense that Respondent Costello did not hold himself out as a "lawyer."⁴⁵ In a similar vein, a nonlawyer can run afoul of the

⁴⁰ *Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111, 1113 (Colo. 1988).

⁴¹ *Id.* at 1116.

⁴² The PDJ focuses this legal analysis on the actions of Respondent Costello, since Respondent Costello Consultants and Respondent Costello appear to be one and the same for all relevant purposes. The PDJ does find, however, that *both* Respondents engaged in the unauthorized practice of law given that two of the writings containing legal arguments in this case were sent on Costello Consultants letterhead.

⁴³ Ex. 8 at 0357.

⁴⁴ See, e.g., *Christiansen v. Melinda*, 857 P.2d 345, 349 (Alaska 1993) ("A statutory power of attorney does not entitle an agent to appear pro se in his principal's place.") (cited with approval in *Adams*, 243 P.3d at 266).

⁴⁵ *People ex rel. Attorney Gen. v. Woodall*, 128 Colo. 563, 563-64, 265 P.2d 232, 233 (1954); *Fla. Bar v. Brumbaugh*, 355 So.2d 1186, 1193-94 (Fla. 1978); *Columbus Bar Ass'n v. Am. Family Prepaid Legal Corp.*, 916 N.E.2d 784, 797 (Ohio 2009).

unauthorized practice of law rules even if the person does not intend to violate those rules.⁴⁶ As to Respondent Costello's argument that no injunction is necessary because he does not plan to again practice law, the PDJ finds that an injunction is indeed warranted. Respondent Costello's text messages to Timothy Hoff display a failure to acknowledge the wrongful nature of his conduct, and the PDJ is not certain that Respondent Costello will abide by the unauthorized practice of law rules of his own volition.

Last, the PDJ observes that at the unauthorized practice of law hearing, some attention was devoted to the question of whether Respondent Costello was acting "on behalf" of the Hoff's. Whether Respondent Costello's activities are labeled as such is not critical. Respondent Costello could have done a variety of things on the Hoff's' behalf that would not have amounted to the unauthorized practice of law.⁴⁷ Here, Respondent Costello was paid thousands of dollars to perform services for the Hoff's, and in the course of those services, he provided legal advice about the Hoff's' proceeding, advanced legal arguments in that proceeding, and held himself out as the Hoff's' legal representative. These actions constitute the unauthorized practice of law.

III. FINE, RESTITUTION, AND COSTS

C.R.C.P. 236(a) provides that, if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each incident of the unauthorized practice of law. The People initially requested that the PDJ recommend the minimum fine of \$250.00 in this case. At the hearing, the People altered their request, instead seeking imposition of a \$1,000.00 fine based on the text messages Respondent Costello sent Timothy Hoff the morning of the hearing.

In assessing fines, the Colorado Supreme Court previously has examined whether a respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.⁴⁸ In this case, the unauthorized activities at issue took place over a limited timeframe, and Respondents have not previously been enjoined from the practice of law. The PDJ also finds that Respondent Costello did not truly understand the import of his actions or the nonsensical nature of the arguments he advanced. On the other hand, Respondent Costello conducted himself in a somewhat aggressive manner in advocating for the Hoff's. Moreover, the PDJ is troubled by the text messages Respondent Costello sent to Timothy Hoff just before the hearing. Although Respondent Costello urged Timothy Hoff to testify truthfully, he also threatened to sue the Hoff's in retribution and failed to display any remorse. Considering these circumstances as well as the significant restitution and costs to be awarded in this case, the PDJ determines that a moderate fine of \$500.00 is warranted here.

⁴⁶ See *People ex rel. Atty. Gen. v. Hanna*, 127 Colo. 481, 482, 258 P.2d 492, 492 (1953).

⁴⁷ See, e.g., *Franklin v. Chavis*, 640 S.E.2d 873, 876 (S.C. 2007).

⁴⁸ *Adams*, 243 P.3d at 267 (also apparently taking the amount of costs levied into account when deciding whether and how much to fine a respondent).

Next, the People request restitution in the amount of \$11,200.00 plus statutory interest. Respondent Costello agreed to pay restitution at the hearing, explaining that he does not “want dirty money” and that he feels bad for the Hoffes because they lost their home. The Colorado Supreme Court has deemed it appropriate to award restitution for any fees received for the unauthorized practice of law.⁴⁹ Restitution thus is warranted here, particularly given that Respondent Costello conferred no meaningful benefit on the Hoffes.

Finally, the People ask that Respondents be ordered to pay \$514.53 in costs, reflecting witness expenses, notary fees, service of process charges, and the People’s administrative fee. Respondents did not respond to the People’s request. Relying on C.R.C.P. 237(a), the PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$514.53 in costs against Respondents.

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondents engaged in the unauthorized practice of law and **ENJOIN** Respondent Costello and Respondent Costello Consultants from the unauthorized practice of law. The PDJ also **RECOMMENDS** that the Colorado Supreme Court order Respondent Costello and Respondent Costello Consultants to pay a **FINE** of \$500.00, **RESTITUTION** to Timothy and Theresa Hoff in the amount of \$11,200.00 plus statutory interest, and **COSTS** of \$514.53.

DATED THIS 26th DAY OF APRIL, 2017.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



Copies to:

Kim E. Ikeler
Office of Attorney Regulation Counsel

Via Email
k.ikeler@csc.state.co.us

Brian Costello
Costello Consultants, LLC
Respondents

Via Email
brian@costelloconsultants.net

Christopher T. Ryan
Colorado Supreme Court

Via Hand Delivery

⁴⁹ *People v. Love*, 775 P.2d 26, 27 (Colo. 1989).