Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	
Original Proceeding in Unauthorized Practice of Law, 12UPL024	
Petitioner: The People of the State of Colorado, **v.** **Respondent:** Luther McCracken.	Supreme Court Case No: 2012SA276 & 2012SA146
ORDER OF COURT	

Upon consideration of the Petition for Injunction, the Response, the Report of Hearing Master Pursuant to C.R.C.P. 236(a) and the Response to and Non Acceptance of Offer in the Report of Hearing Master filed in the above cause, and now being sufficiently advised in the premises,

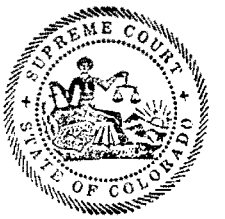
IT IS ORDERED that in light of the Respondent's failure to designate a record and file an Opening Brief within the time permitted by C.R.C.P. 236, this court is considering the Respondent's objections as his Opening Brief in this matter.

IT IS FURTHER ORDERED that the Respondent LUTHER MCCRACKEN, shall be and the same hereby is ENJOINED from engaging in the unauthorized practice of law.

IT IS FURTHER ORDERED that Respondent, LUTHER MCCRACKEN is assessed costs in the amount of $1426.00. Said costs to be paid to the Office of Attorney Regulation Counsel, within (30) days of the date of this order.

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

BY THE COURT, MAY 17, 2013



Case Number: 2012SA276, 2012SA146
Caption: People v McCracken, Luther

CERTIFICATE OF SERVICE

Copies mailed via the State's Mail Services Division on May 20, 2013.

Kim E Ikeler
COLORADO SUPREME COURT
OFFICE OF AT
Ralph Carr Judicial Center
1300 Broadway, St. 500
Denver, CO 80203

Luther McCracken
C/O 600 1725 Rd.
Delta, CO 81416

William R Lucero
PRESIDING DISIPLINARY
JUDGE
1300 Broadway
Ste. 250
Denver, CO 80203

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	RECEIVED MAR 1 2 2013 REGULATION COUNSEL
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** LUTHER MCCRACKEN	Case Number: **12SA146 (consolidated with 12SA276)**

REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)

This matter is before the Presiding Disciplinary Judge ("the PDJ") on an order of the Colorado Supreme Court appointing the PDJ as a hearing master and directing the PDJ to prepare a report setting forth "findings of fact, conclusions of law, and recommendations" pursuant to C.R.C.P. 234(f) and 236(a).

I. SUMMARY

Kim E. Ikeler, of the Office of Attorney Regulation Counsel ("the People"), alleges that Luther McCracken ("Respondent") engaged in the unauthorized practice of law by drafting pleadings and affidavits on behalf of four homeowners in two separate matters, and by attempting to represent them in foreclosure and eviction hearings in Delta County district and county court. The PDJ agrees that Respondent engaged in the unauthorized practice of law through these actions, and therefore recommends that the Colorado Supreme Court enjoin Respondent from the practice of law, impose a fine of $500.00, and award costs in the People's favor.

II. PROCEDURAL HISTORY

On May 14, 2012, the People filed a "Petition for Injunction" against Respondent in case number 12SA146, alleging he engaged in the unauthorized practice of law. Although Respondent responded to the petition on June 11, 2012, the Colorado Supreme Court advised him that his response was deficient because he had not sought permission to file the response out-of-time. Before Respondent could file a motion for extension of time, the Colorado Supreme Court referred this matter to the PDJ, as hearing master, on June 27, 2012. Respondent then filed with the PDJ a document called "Response to.[sic] 'Order

of Hearing Master Pursuant to C.R.C.P. 234-236" on August 15, 2012.[1] The PDJ ordered Respondent to respond to the People's petition by September 20, 2012.

Respondent filed two motions to dismiss pursuant to C.R.C.P. 12(b)(5) on September 19 and 21, 2012, respectively. In those motions, Respondent conceded that he had appeared in C.R.C.P. 120 foreclosure hearings ("Rule 120 hearing") on behalf of Kenneth J. Kropf, Evonne M. Kropf, Chad M. Rundle, and Hannah Q. Rundle, but he asserted that this was permissible because Rule 120 hearings are administrative. The PDJ denied both motions on September 27, 2012.

Respondent filed an answer to the People's petition on October 22, 2012, with numerous attachments, many of which appear to be the same documents he had filed on behalf of the Kropfs and Rundles in the Delta County courts.[2] He also resubmitted his answer, which he previously filed with the Colorado Supreme Court, appointing Chief Justice Michael L. Bender as his fiduciary. In his quixotic and unconventional answer, Respondent referred to himself as a "secured party creditor" and a "private attorney general," appointed the PDJ as his fiduciary, disputed the PDJ's jurisdiction, and asserted claims of extortion, fraud, and perjury against Delta County judges Charles R. Greenacre and Sandra K. Miller.

On September 19, 2012, the People filed with the Colorado Supreme Court a "Petition for Injunction" against Respondent in case number 12SA276. Respondent filed an answer on October 18, 2012, contesting the Colorado Supreme Court's jurisdiction and denying some allegations in the petition. The Colorado Supreme Court referred case number 12SA276 to the PDJ on November 7, 2012, and consolidated the case with case number 12SA146.

Respondent again challenged the Colorado Supreme Court's jurisdiction in a filing on November 7, 2012, entitled, "Notice by Challenge Affidavit Refusal for Cause of Prior Judgment On Case #s 12 UPL 24, 12 SA 0146, 12 SA 276 and 12 SA 277. Disclosure of Criminal Activity Within the Corporate New Deal . . . ."[3] On December 11, 2012, Respondent served the People with initial disclosures in which he sought restitution on behalf of the Rundles and Kropfs in the amounts of $687,934.00 and $328,927.00, respectively.

The PDJ held a pre-trial conference in the consolidated cases on January 4, 2013, but Respondent declined to attend. On that same day, the PDJ granted the People's two requests to introduce telephone testimony of Judge Greenacre, Judge Miller, and attorney Donna Bakalor.

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[1] In this pleading, Respondent objects to the PDJ's jurisdiction.

[2] Respondent was granted an extension of time until October 22, 2012, to file his answer.

[3] Although titled a "notice," this document appears to be a challenge to the PDJ's jurisdiction. The People did not respond. The PDJ addresses this notice *infra* page 14.

On January 16, 2013, Respondent issued twenty-five subpoenas to two-dozen third parties, requiring them to appear and give testimony at the unauthorized practice of law hearing and to produce a variety of documents. The People objected to the late disclosure of these witnesses and asked for sanctions, requesting that the PDJ bar Respondent's witnesses from testifying at the hearing or producing documents. Respondent orally responded to the motion at a status conference on January 17, 2013. He explained that he believed he was not required to abide by the discovery rules or the PDJ's at-issue conference order because the People had not responded to certain written inquiries he sent them. The People described these written demands as contrary to established discovery rules and argued that they were therefore under no obligation to respond to the demands.[4] On January 23, 2013, the PDJ granted the People's request for sanctions, precluded Respondent from presenting witnesses at the hearing, other than himself, and quashed, sua sponte, all the subpoenas issued to third parties on Respondent's behalf.

At the hearing on January 28, 2013, Kim E. Ikeler appeared on behalf of the People and Respondent appeared pro se. During the hearing, Susan Hendrick and Respondent testified in person and the PDJ heard testimony from Donna Bakalor, Judge Greenacre, and Judge Miller via telephone.[5] The PDJ admitted the People's exhibits 1-2, 9-12, 15, 18, 20, 22-23, 25-28, 31-34, 36A, 36E, 36M-W, 37A, 37M-S, 38A, 38D, 38G-I, 38K-N, 38P-R, 38T-V, 38X-Z, and 38AA-CC, as well as Respondent's exhibits A-L. During the hearing, Respondent offered a continuing objection to the PDJ's jurisdiction and to all exhibits offered by the People into evidence.[6]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

General Allegations

Respondent is not licensed to practice law in the State of Colorado or any other state. Respondent's address is 600 1725 Road, Delta, Colorado 81416.

The Kropf Matter

On May 15, 2006, Kenneth J. Kropf and Evonne M. Kropf executed an adjustable rate mortgage in the amount of $395,000.00, payable to Option One Mortgage Corporation ("Option One").[7] On that same day, the Kropfs executed a deed of trust to Option One, securing the note and encumbering their

[4] The People provided these documents to the PDJ for review in a filing dated January 18, 2013.
[5] Respondent refused to answer the People's questions on the witness stand, invoking the Fifth Amendment.
[6] The PDJ overruled Respondent's objections.
[7] Exs. 36E, 36S & 37S.

property in Hotchkiss, Colorado ("Kropf property").[8] This note was later assigned to Wells Fargo Bank, N.A.[9]

The Kropfs eventually defaulted on their mortgage, and Wells Fargo instituted a foreclosure action in Delta County District Court ("Kropf foreclosure").[10] Judge Greenacre was assigned the case.[11] Susan Hendrick of Aronowitz & Mecklenburg, LLP represented Wells Fargo during the foreclosure proceedings. Judge Greenacre issued an "Order Authorizing Sale" of the Kropf property on February 1, 2010.[12] A foreclosure sale was held on May 25, 2011, and Wells Fargo purchased the property for $472,980.00.[13]

Wells Fargo then brought a forcible entry and detainer action against the Kropfs in Delta County County Court ("Kropf eviction").[14] Judge Sandra K. Miller was assigned this case.[15] The Kropfs defaulted in this proceeding, and Judge Miller granted Wells Fargo's motion for default judgment.[16] Judge Miller issued a "Writ of Restitution" on July 6, 2011, which allowed Wells Fargo to take possession of the property, and closed the case.[17]

On December 14, 2011, Respondent wrote to counsel for Wells Fargo, referring to himself as a "Secured Party Creditor" of the Kropf property and seeking responses within fourteen days to numerous questions related to the Kropf foreclosure.[18] On that same day, Respondent sent Wells Fargo a check in the amount of $395,000.00 and wrote in the memo line "EFI only for Discharge of Debt."[19] He also referenced the Kropfs on the face of the check and wrote on the back of the check: "Do Not Deposit, for Discharge of Debit, EFI only, Luther S. McCracken, Authorized Representative, Without Recourse."[20]

This check was returned to Respondent on January 5, 2012.[21] On January 13, 2012, Respondent submitted a letter on the Kropfs' behalf to Judge Greenacre, Judge Miller, and Wells Fargo in which he asserted a

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[8] Exs. 2 & 36T.
[9] Exs. 36E & 36T.
[10] Ex. 36A. This case was styled *Wells Fargo Bank v. Kenneth Kropf, et al.*, Delta County District Court, case number 10CV25.
[11] *See* Ex. 36A.
[12] Ex 36Q at 0153.
[13] Exs. 36U & 36V. Hendrick testified that under the terms of the foreclosure sale, Wells Fargo was to take official ownership of the property in December 2011.
[14] Ex. 37A. This case was styled *Wells Fargo Bank v. Evonne Kropf, et al.*, Delta County County Court, case number 11C841.
[15] Ex. 37A.
[16] Ex. 37A at 0002.
[17] Ex. 37A at 0002.
[18] Ex. 10.
[19] Exs. 11-12.
[20] Exs. 11-12.
[21] Ex. 36Q at 0149-0151, 0157.

$395,000.00 interest in the Kropf property.[22] He attached an affidavit to the letter, asking the judges to declare the Kropf foreclosure and Kropf eviction "null and void" and to provide a resolution for the Kropfs.[23] Judge Greenacre entered an order on January 17, 2012, striking the letter and the affidavit.[24]

Judge Miller entered a minute order in the Kropf eviction on January 23, 2012, stating in pertinent part:

> On 1/13/12 [Respondent] filed a pleading in this case on behalf of defs. [Respondent] is not a licensed attorney so he cannot legally file pleadings on behalf of defs. The pleading has been improperly filed and the court will accordingly take no action on the document.[25]

Hendrick testified that her firm received and reviewed Respondent's letter, dated January 13, 2012. She further stated that she believed this was a "form" letter, one that her firm often receives from individuals who identify themselves as members of the "sovereign" movement.[26] Like other such letters, Hendrick said, Respondent's letter contained meritless legal arguments lacking any factual basis. For example, Respondent never provided Hendrick's firm with any evidence of his alleged legal or possessory interest in the Kropf property. In addition, for Respondent to successfully declare a foreclosure sale null and void, Hendrick testified, he would have needed to prove Wells Fargo had no standing—a very high burden.

On January 19, 2012, Respondent again wrote to Wells Fargo on behalf of the Kropfs, this time contending that because Wells Fargo had accepted his $395,000.00 tender, it had discharged the Kropfs' debt.[27] The Kropfs then

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[22] Exs. 36M, 36R, 37M & 37R. Respondent admits to sending this correspondence to Judge Greenacre, Judge Miller, and Wells Fargo. Respondent's Answer at Ex. A 8-32 ¶¶ 1-4. In addition, Respondent attached this document to his answer to the People's petition. *Compare* Respondent's Answer at Ex. B 17-21 to B 18-21 *with* Exs. 36M, 36R, 37M & 37R. Judge Miller testified that she spent ten to fifteen minutes reviewing this letter. She interpreted this letter in part as a threat of litigation against her by Respondent. She stated that Respondent made baseless legal assertions in the letter, including that he had a legal interest in the Kropf property. Judge Miller testified that only possessory interests are relevant in an eviction case.

[23] Ex. 15. Respondent also attached this affidavit to his answer to the People's petition. *Compare* Respondent's Answer at Ex. B 19-21 to B 21-21 *with* Ex. 15.

[24] Ex. 36N.

[25] Ex. 37N.

[26] Respondent asserts that he is a 'sovereign flesh and blood person' rather than an 'artificial person.' Ex. F. According to Respondent, an 'artificial person' is a U.S. corporation created by the U.S. government, to act as the government's agent in order for the government to collect revenue. Ex. F. This artificial person or corporate entity is created when a U.S. birth certificate is issued. Ex. D. According to Respondent, the corporation known as 'Luther S. McCracken' can only be brought before an Article III court, as provided in the U.S. Constitution. Ex. D.

[27] Exs. 36Q at 0145-0150 & 37Q at 0132. Hendrick testified that Wells Fargo refused the check because any payments on the mortgage had to come from the Kropfs. She also testified

executed and filed a document on January 20, 2012, asserting that they had appointed Respondent as their "counselor" on December 5, 2011.[28]

Respondent filed another affidavit, with attachments, in the Kropf foreclosure on January 24, 2012.[29] Respondent again asked Judge Greenacre to declare the Kropf foreclosure "null and void," and he stated that the Kropfs had appointed him as their "council [sic]."[30] The affidavit stated in part:

> To accuse me, Luther S. McCracken, of practicing Law would violate the rights of Kenneth J. Kropf and Evonne M. Kropf to obtain council [sic] and my rights of free speech. The Constitution is Supreme Law of the land and nowhere in the Constitution does it require Me to have a license to, council, point out the violations that are being committed by their accusers.[31]

In the same affidavit, Respondent challenged the validity of the Kropf foreclosure and again accused Wells Fargo and its counsel of fraud. He also objected to the evidence of debt submitted by Wells Fargo at the hearing, cited case law, and made legal arguments supporting dismissal.[32] He further demanded damages in favor of the Kropfs as against Wells Fargo in the amount of $222,337,800.00.[33] Respondent directed all further correspondence in the case to be sent to him.[34]

On March 13, 2012, Judge Greenacre entered another order, construing Respondent's affidavit as a motion for post-trial relief pursuant to C.R.C.P. 59 and denying it as untimely.[35] At the unauthorized practice of law hearing, Judge Greenacre testified that Respondent's conduct substantially hindered the Kropf foreclosure proceedings because Respondent frequently made non-cognizable legal arguments, demanded responses from parties, attorneys, and

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that sending a check 'not for deposit' is known as a common scam perpetuated by individuals who self-identify as 'sovereigns.' Typically, she stated, these individuals send a check to a bank on a closed account in an attempt to discharge their debt.

[28] Exs. 9 at 0075-0080 & 37P at 0074-0079.

[29] Exs. 36O. Respondent admits filing this affidavit with the court. Respondent's Answer at 4; Respondent's Answer at Ex. A 9-32 ¶ 5. Judge Greenacre and Judge Miller testified that it took them each a few hours to review this document. Hendrick testified that she spent approximately fifteen minutes reviewing the documents only because she had seen similar documents from the 'sovereign' community before. She stated that her firm did not respond to Respondent's demands because she felt it would just add 'fuel to the fire.' She also testified that because Respondent was not the mortgagee, Wells Fargo did not have a legal responsibility to answer his demands or produce any of the documents he had requested, many of which were privileged.

[30] Ex. 36O at 0049, 0051.

[31] Ex. 36O at 0051.

[32] Ex. 36O.

[33] Ex. 36O at 0083.

[34] Ex. 36O at 0087.

[35] Ex. 36W.

judges to his written allegations, and threatened legal consequences and large monetary fines if they failed to respond. According to Judge Greenacre, there is no legal foundation for Respondent's legal claims and threatened actions.

On June 7, 2012, Respondent sent Aronowitz & Mecklenburg, LLP and Wells Fargo an "Affidavit of Specific Truth, Notice and Demand Opportunity to Cure," demanding millions of dollars in damages.[36] Hendrick testified that she remembered receiving and reviewing this affidavit but took no action in response because it had no legal foundation.

The Rundle Matter

On May 22, 2009, Chad M. Rundle and Hannah Q. Rundle executed a promissory note for $141,780.00 payable to Wells Fargo and secured by a deed of trust for their home in Delta, Colorado ("Rundle property").[37] The Rundles defaulted on their loan and Wells Fargo foreclosed on the property ("Rundle foreclosure").[38] The Rundle foreclosure was assigned to Judge Greenacre.[39] Wells Fargo was represented by attorney Donna H. Bakalor of Aronowitz & Mecklenburg, LLP.

On February 14, 2012, Respondent drafted and filed a document entitled "Reply to the Court" on behalf of the Rundles, demanding that the foreclosure sale be stopped and be "over with, done, [and] finished and have also agreed to fraud by your silence."[40] In that document, Respondent identified himself as a "Secured Party Creditor" and referenced the Rundles and their property.[41] He also demanded on the Rundles' behalf that the foreclosure sale be halted and that Wells Fargo release all of its rights against the Rundles.[42]

On February 20, 2012, Mr. Rundle executed an affidavit in which he cited the U.S. Constitution and made other legal arguments.[43] On that same

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[36] Exs. 33-34. Respondent neither admitted nor denied preparing and filing these affidavits, but he attached these same documents to his answer to the People's petition. *Compare* Respondent's Answer Ex. A 17-32 to A 22-31 *with* Ex. 33; *Compare* Respondent's Answer Ex. A 23-32 to A 27-32 *with* Ex. 34. The PDJ therefore finds, based on the preponderance of the evidence, that Respondent in fact prepared these documents.

[37] Exs. 38D & 38R.

[38] *See* Ex. 38R at 0131-0137. The case was styled *In the Matter of the Application of Wells Fargo Bank, N.A., for an Order Authorizing the Public Trustee for Delta County, State of Colorado, to Sell Certain Real Estate Contained in a Deed of Trust*, Delta County District Court, case number 12CV22.

[39] *See* Ex. 38A.

[40] Exs. 18 & 38G.

[41] Exs. 18 & 38G.

[42] Exs. 18 & 38G. Bakalor testified that it took her approximately one hour to review this document. Her firm did not respond to Respondent's demands.

[43] Ex. 22.

day, Ms. Rundle and Respondent executed substantially similar affidavits.[44] Respondent recorded these affidavits at the Delta County Clerk and Recorder's office.[45]

Also on February 20, 2012, the Rundles jointly executed another affidavit in which they claimed to have made payments to Wells Fargo of $18,000.00 and invested over $250,000.00 in improving the Rundle property.[46] The Rundles also asserted a secured interest in the property.[47] Finally, the Rundles executed individual affidavits on that day, alleging they had sent electronic fund transfers to Wells Fargo to discharge their debt.[48] All three of these affidavits were recorded in the Delta County land records.[49]

On February 22, 2012, Respondent drafted and filed an unsigned answer to the complaint in the Rundle foreclosure.[50] In this pleading, Respondent made a jurisdictional argument, challenged Wells Fargo's attorneys' licenses to practice law, argued that the Rundles were deprived of due process, and contended that the foreclosure proceeding was fraudulent and should be dismissed.[51] Attached to this pleading were the aforementioned affidavits executed by Respondent and the Rundles, as well as a memorandum of case law containing Respondent's signature.[52] Respondent also attached a "Notice of Interest," asserting Respondent's purported $14,178.00 interest in the Rundle property, which was executed by Respondent and recorded in the Delta County land records.

That same day, Judge Greenacre entered an order directing the Rundles to sign the answer and stating that the "Court would not consider any pleadings filed by [Respondent] because he is neither a party to this action nor an attorney licensed to practice law in the State of Colorado."[53] The Rundles signed and re-filed the answer on February 29, 2012.[54] Bakalor testified the

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[44] Exs. 20 & 22-23. Respondent attached these affidavits to his answer to the People's petition. *Compare* Respondent's Answer Ex. A 30-32 to A 31-32 *with* Ex. 20.
[45] *See* Exs. 20 & 22-23. Respondent also filed a pleading in the Rundle foreclosure asking that neither he nor the Rundles be charged costs in the foreclosure proceeding. Ex. 32.
[46] Ex. 25 & Ex. 38H at 0070-0072. Bakalor testified that neither the Rundles nor Respondent produced any evidence during the course of the foreclosure or eviction proceeding demonstrating the improvements made to the Rundle property.
[47] Ex. 25.
[48] Exs. 27-28 & 31.
[49] *See* Exs. 25 & 27-28.
[50] Ex. 38H. Bakalor testified that it took her approximately one hour to review this document but that she did not respond, believing the arguments it contained lacked merit.
[51] Ex. 38H.
[52] Ex. 38H.
[53] Ex. 38I.
[54] Ex. 38L.

answer lacked cognizable legal arguments and contained no defenses that would preclude the foreclosure sale of the Rundle property.[55]

In late March 2012, the Rundles and Respondent drafted, signed, and filed an "Affidavit of Specific Truth, Notice and Demand Opportunity to Cure" in the Rundle foreclosure, demanding that the deed of trust be removed from the Rundle property and requesting millions of dollars in damages.[56] Respondent also sent a similar affidavit to Wells Fargo and the Delta County City Attorney's office.[57]

Judge Greenacre held a Rule 120 hearing at which Respondent appeared with the Rundles and sat at counsel's table.[58] Respondent admits he appeared at this hearing but states he was entitled to do so because a Rule 120 hearing is administrative.[59] Both Judge Greenacre and Bakalor testified that at this hearing, Respondent did most of the talking on behalf of the Rundles, including demanding a jury trial, challenging the court's jurisdiction, and calling for Judge Greenacre's recusal. After he made his arguments, Respondent and the Rundles left the courtroom. Judge Greenacre testified that Respondent's conduct hindered the Rundle foreclosure proceeding because Respondent raised numerous arguments supported neither by fact nor law, which the court nevertheless had to address.

On April 3, 2012, Judge Greenacre entered an order authorizing the sale of the Rundle property[60] for approximately $99,000.00.[61]

On July 2, 2012, Respondent, together with the Rundles, filed a "Respectful Demand for Judge Greenacre's Recusal."[62] Like other pleadings Respondent drafted, this pleading contained citations to the U.S. Constitution and various federal statutes, and it included unfounded legal arguments.[63] Judge Greenacre denied this motion on July 11, 2012.[64] Respondent and the Rundles moved for reconsideration on July 16, 2012, and following Wells

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[55] Exs. 26 & 38H at 0072.
[56] Ex. 38P.
[57] Exs. 38P, 38T & 38U.
[58] Ex. 38A at 0002.
[59] Respondent's Mots. to Dismiss at 1.
[60] Ex. 38Q; *see also* Ex. 38V (return and order approving sale and indicating the Rundle property was sold back to Wells Fargo). Judge Greenacre and Bakalor testified that the foreclosure action was complete upon the filing of the return and order approving sale.
[61] Ex. 38V.
[62] Ex. 38X. Bakalor testified that this pleading was 'procedurally odd' because it was made after the conclusion of the Rundle eviction, yet Respondent continued to argue that Wells Fargo did not have standing to foreclose on the Rundle property.
[63] Ex. 38X.
[64] Ex. 38Y.

Fargo's filing of an objection on July 20, 2012, they submitted a reply on July 31, 2012.[65] This motion was denied on August 3, 2012.[66]

Judge Miller testified that during the relevant timeframe, she presided over an eviction hearing concerning the Rundle property.[67] Bakalor appeared at this hearing for Wells Fargo, and Respondent attempted to appear on behalf of the Rundles. Judge Miller recalled that when Respondent approached the podium, she asked him if he had an attorney registration number. He replied that he did not and then demanded to be called "Luther." Judge Miller did not allow Respondent to represent the Rundles and informed him that he needed to file an answer on his own behalf to participate. The hearing then proceeded without Respondent's involvement.

Unauthorized Practice of Law

Article VI of the Colorado Constitution grants the Colorado Supreme Court jurisdiction to regulate and control the practice of law in Colorado.[68] As part of these inherent and plenary powers, the Colorado Supreme Court has exclusive jurisdiction over attorneys and the authority to regulate, govern, and supervise the practice of law in Colorado.[69] The Colorado Supreme Court restricts the practice of law to licensed attorneys in order to protect members of the public from receiving incompetent legal advice from unqualified individuals.[70]

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[65] Exs. 38Z & 38BB.

[66] Ex. 38CC.

[67] Judge Miller stated that she took 'extra' precautions before the eviction hearing, including setting the hearing on a separate docket, preparing for anticipated disruptions, notifying security, and spending additional time reviewing applicable case law.

[68] Colo. Const. art. VI § 1; *Unauthorized Practice of Law Comm'n v. Grimes*, 654 P.2d 822, 823-24 (Colo. 1982) ('It would indeed be an anomaly if the power of the courts to protect the public from the improper or unlawful practice of law were limited to licensed attorneys and did not extend or apply to incompetent and unqualified laymen and lay agencies. Such a limitation of the power of the courts would reduce the legal profession to an unskilled vocation, destroy the usefulness of licensed attorneys, as officers of the courts, and substantially impair and disrupt the orderly and effective administration of justice by the judicial department of the government; and this the law will not recognize or permit.') (quoting *W. Va. State Bar v. Earley*, 109 S.E.2d 420, 440 (W. Va. 1959)); *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 407, 312 P.2d 998, 1000-03 (1957) ('The judiciary has inherent and plenary powers, with or without legislative enactment, to regulate and control the practice of law to the extent that is reasonably necessary to the proper functioning of the judiciary.').

[69] *Grimes*, 654 P.2d at 823; *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 277, 391 P.2d 467, 470 (1964); *Conway-Bogue Realty Inv. Co.*, 135 Colo. at 407, 312 P.2d at 1002-03.

[70] *Grimes*, 654 P.2d at 826; *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.'); *In re Baker*, 85 A.2d 505, 514 (N.J. 1952) ('The amateur at law is as dangerous to the community as an amateur surgeon would be.').

The Colorado Rules of Civil Procedure define the practice of law as: "(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or (ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies."[71] Colorado Supreme Court case law holds 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 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."[72] Phrased somewhat more broadly, a layperson who acts "in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting that person in connection with these rights and duties" engages in the unauthorized practice of law.[73] An individual has the right to represent himself or herself pro se in civil and criminal cases; however, that individual may not appear in court to represent the rights of others.[74]

Two Colorado Supreme Court cases—*People v. Shell* and *People v. Adams*—lend particularly relevant guidance concerning the actions that warrant a finding of the unauthorized practice of law. In *People v. Shell*, a woman acting as an advocate for two mothers in dependency and neglect cases sent letters to their attorney directing him to follow her legal advice, instructed the mothers to file and serve pro se pleadings and discovery requests without the knowledge or approval of their attorney, and assisted the mothers to select and prepare pleadings and discovery requests.[75] The advocate also filed an action in federal court alleging civil rights violations on behalf of one of the mothers.[76] The Colorado Supreme Court found that these actions constituted the unauthorized practice of law.[77]

Similarly, in *People v. Adams*, the Colorado Supreme Court determined that a layperson engaged in the unauthorized practice of law by persuading subcontractors who were owed money by contractors to assign him their debts.[78] His acts involved the "exercise of legal discretion": he drafted and filed pleadings, responded to opposing parties' pleadings, sought discovery, and appeared in court.[79]

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[71] C.R.C.P. 201.3(2)(b)(i)-(ii); *see also People v. Adams*, 243 P.3d 256, 266-67 (Colo. 2010); *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).
[72] *Shell*, 148 P.3d at 171.
[73] *See Pub. Utils. Comm'n*, 154 Colo. at 279, 391 P.2d at 471; *Shell*, 148 P.3d at 171.
[74] *Pub. Utils. Comm'n*, 154 Colo. at 281, 391 P.2d at 472; *Grimes*, 654 P.2d at 824.
[75] 148 P.2d at 168-71.
[76] *Id.* at 169.
[77] *Id.* at 170.
[78] 243 P.3d at 268.
[79] *Id.*

Here, Respondent engaged in the unauthorized practice of law in the Kropf matter by drafting and sending correspondence on behalf of the Kropfs to Wells Fargo's attorneys and to Judges Greenacre and Miller in which he contested the validity of the Kropf foreclosure and demanded a remedy for the Kropfs. Respondent also sent a $395,000.00 check to Wells Fargo, together with correspondence, in which he asserted legal arguments in support of his demand that Wells Fargo discharge the Kropfs' debt. Respondent also engaged in the unauthorized practice of law by filing affidavits in the two court proceedings in which he challeged the legality of the proceedings, demanded the dismissal of the two cases, and sought substantial damages on behalf of the Kropfs. Further, Respondent purported to represent the Kropfs at the Rule 120 hearing before Judge Greenacre by sitting at counsel's table and raising legal arguments in court. Finally, Respondent filed a post-trial motion on behalf of the Kropfs, seeking reconsideration of the matter and a declaration by the judge that the proceedings were "null and void."

The letters, affidavits, and motions filed by Respondent reflect the attempted exercise of legal judgment, knowledge, or skill[80] (although in this instance, the filings and mailings reflect a misunderstanding of relevant legal principles). For example, Respondent portrayed Wells Fargo's conduct as "fraudulent" and asked it to "set off" or "discharge" the debt and demanded "punitive damages" in the documents he filed.[81] These words carry specific meanings and important consequences within the legal context. His filings had the potential to affect the Kropfs' legal rights and duties.[82]

The PDJ also concludes that Respondent engaged in the unauthorized practice law in the Rundle matter by drafting, signing, and filing for the Rundles the following: various affidavits; a "Reply to the Court"; an "Answer to Complaint and Motion to Dismiss"; an "Affidavit of Specific Truth, Notice and Demand for Opportunity to Cure"; a motion to recuse Judge Greenacre; and a reply to Wells Fargo's objection to the recusal motion. These filings reflect one of the hallmarks of the practice of law: the exercise of legal judgment, knowledge, or skill (although, as in the Kropf matter, these filings demonstrate a misinterpretation of relevant legal principles). Again, legal arguments can be found in these filings, including citations to an abundance of case law and interpretations of those cases.[83] Finally, Respondent appeared on behalf of the

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[80] *See id.* at 266 (noting that non-attorneys are barred from performing on another's behalf activities that require the exercise of legal discretion or judgment); *Grimes*, 759 P.2d at 3-4 (ordering a layperson who had been enjoined from the practice of law to refrain from 'prepar[ing] any document for any other person or entity which would require familiarity with legal principles'); *Pub. Utils. Comm'n*, 154 Colo. at 280, 391 P.2d at 471-72 (stating that the practice of law encompasses the preparation for others of 'procedural papers requiring legal knowledge and technique').

[81] Ex. 36O at 0053, 0059, 0061.

[82] *See Shell*, 148 P.3d at 171 (noting it is the unauthorized practice of law to take actions that may affect another's legal rights and duties).

[83] Ex. 26 at 0038.

Rundles in the foreclosure and eviction proceedings, where he sat at counsel table and made legal arguments.

Respondent advanced in his pleadings and at the unauthorized practice of law hearing several affirmative defenses. The PDJ examines each defense in turn and concludes that each lacks merit.

First, Respondent argues that he was authorized to represent the Kropfs and the Rundles at the Rule 120 hearings because such hearings are administrative in nature, relying on *Denver Bar Association v. Public Utilities Commission*. That case, however, involves whether laypersons can represent others before the Colorado Public Utilities Commission in matters not involving legal principles and where the subject matter of the hearing has limited value—a matter quite unlike the foreclosure cases before Judges Greenacre and Miller.[84] Further, the Colorado Supreme Court has disapproved of similar conduct in *Unauthorized Practice of Law Committee v. Prog*.[85]

Another defense Respondent advances is that the Kropfs appointed him as their counselor in December 2011. He maintains that as a member of the "sovereign" movement, he may conduct himself in accordance with the U.S. Constitution, as he interprets it, which includes the right to provide counsel to the Kropfs and the Rundles. Courts nationwide have roundly rejected this defense, holding that conferral of a power of attorney does not authorize an unlicensed person to practice law.[86] Rather, a power of attorney permits an attorney-in-fact to make decisions regarding litigation, which in turn are to be implemented by a licensed attorney.[87] The fundamental distinction between attorneys-in-fact and attorneys-at-law has deep roots in our justice system, dating back to fifteenth-century England,[88] and for good reason. To confer upon attorneys-in-fact the privileges of attorneys-at-law would vitiate the system of standards governing attorney licensure, since powers of attorney could easily be used to circumvent those standards.[89] The resulting practice of law by persons without appropriate training and skill would deprive members

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[84] *Pub. Utils. Comm'n*, 154 Colo. at 281-82, 391 P.2d at 472.

[85] 761 P.2d 1111, 1111-17 (Colo. 1998) (finding a layperson engaged in the unauthorized practice of law on behalf of homeowners in Rule 120 proceedings by obtaining a fee agreement, drafting pleadings, conducting research, and offering legal advice).

[86] *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; *see also Drake v. Superior Court*, 26 Cal. Rptr. 2d 829, 833 (Cal. App. 1994) (same); *In re Conservatorship of Riebel*, 625 N.W.2d 480, 483 (Minn. 2001) (same); *Estate of Friedman*, 482 N.Y.S.2d 686, 687 (Surr. Ct. 1984) (same); *Disciplinary Counsel v. Coleman*, 724 N.E.2d 402, 404 (Ohio 2000) (same); *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. Ct. 1994) (same).

[87] *Riebel*, 625 N.W.2d at 482.

[88] *Coleman*, 724 N.E.2d at 404.

[89] *See, e.g., Estate of Friedman*, 482 N.Y.S.2d at 687.

of the public of effective representation, thus occasioning significant public harm.

Respondent next posits that he was a real party in interest in the Kropf and Rundle foreclosures. However, Respondent provided no evidence supporting this argument at either foreclosure proceeding or during the unauthorized practice of law hearing.

Finally, Respondent argues that neither the Colorado Supreme Court nor the PDJ have jurisdiction over him without his written permission. The PDJ disagrees. Article VI of the Colorado Constitution grants the Colorado Supreme Court exclusive authority to regulate and control the practice of law in Colorado.[90] The Colorado Supreme Court then referred the matter to the PDJ, as hearing master, pursuant to C.R.C.P. 234. Further, the PDJ has personal jurisdiction over Colorado residents, including Respondent, who are served in Colorado.[91] As such, jurisdiction is proper in this proceeding. Thus, the PDJ **DENIES** Respondent's "Notice by Challenge Affidavit Refusal for Cause of Prior Judgment On Case #s 12 UPL 24, 12 SA 0146, 12 SA 276 and 12 SA 277. Disclosure of Criminal Activity Within the Corporate New Deal . . . ."

Fines, Restitution, and Costs

The People seek a recommendation that the Colorado Supreme Court order Respondent to pay a fine of $2,000.00 and costs in the amount of $1,426.00. Each issue is considered in turn below.

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 argue Respondent engaged in the unauthorized practice of law in two instances by assisting the Rundles and the Kropfs. The PDJ finds this position reasonable.[92]

The People request imposition of a $1,000.00 fine for each incident—the maximum fine permitted per incident of the unauthorized practice of law under C.R.C.P. 236(a). However, Respondent appears to genuinely believe he was acting in the Kropfs' and the Rundles' best interests, and in accord with his own rights, by assisting them in the litigation. These beliefs were ill-founded and injurious, but the PDJ does not attribute a bad-faith motive to

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[90] *Prog*, 761 P.2d at 1115.

[91] C.R.C.P. 235.

[92] *See Adams*, 243 P.3d at 267 & n.7 (holding that a respondent who provided legal services to five separate individuals engaged in five instances of the unauthorized practice of law for purposes of C.R.C.P. 236).

Respondent.[93] Thus, the PDJ believes that a fine of $250.00 per occurrence is appropriate here.

Turning to the issue of costs, the People filed a statement of costs on January 30, 2013, requesting $1,426.00 in costs. In unauthorized practice of law matters, the Colorado Supreme Court may assess costs as it deems appropriate, pursuant to C.R.C.P. 237(a). Because the unauthorized practice of law rules do not otherwise speak to the awarding of costs, the Colorado Rules of Civil Procedure apply to this issue.[94] C.R.C.P. 54(d), in turn, provides that "costs shall be allowed as of course to the prevailing party."[95] Here, the People are the prevailing party, and the PDJ finds that the requested costs, which are limited to service of process fees, deposition costs, court reporter appearance fees, a notary public fee for swearing in a witness who testified during the hearing, and an administrative fee, are reasonable.[96]

Finally, the People have not requested restitution in this matter, nor does it appear that restitution would be appropriate here.

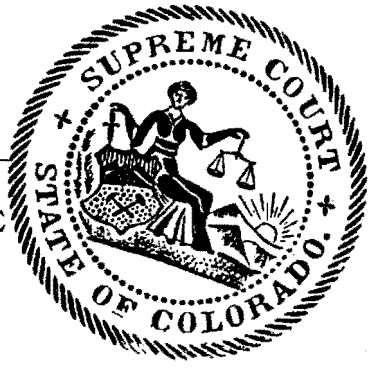
IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** Respondent Luther McCracken engaged in the unauthorized practice of law and **ENJOIN** him from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondent to pay a **FINE** of $500.00 and to pay **COSTS** in the amount of $1,426.00.

DATED THIS 12th DAY OF MARCH, 2013.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



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[93] *See id.* at 267-68 (in assessing fines for the unauthorized practice of law, examining whether the respondent's actions were "malicious or pursued in bad faith").
[94] C.R.C.P. 235(d).
[95] *See also* C.R.S. § 13-16-122 (setting forth an illustrative list of categories of 'includable' costs in civil cases, including '[a]ny fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case,' 'witness fees,' '[a]ny costs of taking depositions for the perpetuation of testimony,' and '[a]ny fees for service of process').
[96] C.R.C.P. 237(a).

Copies to:

Kim E. Ikeler — Via Hand Delivery
Office of Attorney Regulation Counsel

Luther McCracken — Via First-Class Mail
Respondent
600 1725 Road
Delta, CO 81416

Christopher T. Ryan
Colorado Supreme Court — Via Hand Delivery