Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 18, 2019 CASE NUMBER: 2017SA287
Original Proceeding in Unauthorized Practice of Law, 2017UPL52	
Petitioner: The People of the State of Colorado, **v.** **Respondents:** Jalaika Gorden and Affordable Auto Claims Mediation, LLC, a Colorado limited liability company.	Supreme Court Case No: 2017SA287
ORDER OF COURT	

Upon review of the Report of Hearing Master Under C.R.C.P. 236(a) filed in the above cause, and the objection filed to that report,

IT IS ORDERED that JALAIKA GORDEN and AFFORDABLE AUTO CLAIMS MEDIATION, LLC, a Colorado limited liability company (collectively, "Respondents"), are ENJOINED from engaging in the unauthorized practice of law, including the following: giving clients advice on economic and noneconomic damages, such as for physical or mental pain suffered; advising clients of their rights, duties or privileges under an insurance policy when such advice requires any legal skill or knowledge; advising clients whether to accept an insurance company's settlement offer or whether to release claims; participating in the formation, ownership, direction, or control of a company that offers or provides legal services; having any contact with insurers to settle clients' bodily injury claims against the insurers or the insurers' clients by negotiating the legal aspects or monetary value of clients' claims; accepting

or collecting a fee based on a percentage of any parties' settlement recovery; indicating the ability to negotiate or settle insurance claims for bodily injury on a party's behalf; and advertising in a manner that would reasonably lead clients to believe that Respondents can engage in the above-listed activities or any other activities that constitute the unauthorized practice of law.

IT IS FURTHER ORDERED that Respondents shall jointly and severally pay RESTITUTION of $2,354.74 to Keacha Barnes and RESTITUTION of $1,030.05 to Ayana Barnes.

IT IS FURTHER ORDERED that Respondents shall jointly and severally pay a fine in the amount of $1,000.00.

IT IS FURTHER ORDERED that Respondents are assessed costs in the amount of $789.00. Costs are to be paid to the Office of Attorney Regulation Counsel within (30) days of the date of this order.

BY THE COURT, MARCH 18, 2019

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	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondents:** JALAIKA GORDEN and AFFORDABLE AUTO CLAIMS MEDIATION, LLC, a Colorado limited liability company	Case Number: **17SA287**
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

In this matter, Jalaika Gorden ("Respondent Gorden") and her company Affordable Auto Claims Mediation, LLC ("Respondent AACM") (collectively "Respondents") are alleged to have engaged in the unauthorized practice of law. William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), finds that the Office of Attorney Regulation Counsel ("the People") have proved by a preponderance of evidence that Respondents engaged in the unauthorized practice of law by representing clients with third-party bodily injury claims and negotiating those clients' settlements with insurance companies. The PDJ thus recommends that the Colorado Supreme Court enjoin Respondents from the unauthorized practice of law.

I. PROCEDURAL HISTORY

On behalf of the People, Kim E. Ikeler filed a petition for injunction with the Colorado Supreme Court on December 11, 2017. The Colorado Supreme Court issued an "Order to Show Cause," and on January 16, 2018, Respondents responded to the petition. The Colorado Supreme Court entered an order on January 25, 2018, referring this matter to the PDJ for "findings of fact, conclusions of law, and recommendations."

On March 23, 2018, Respondents moved for judgment as a matter of law, contending that they did not engage in the unauthorized practice of law but rather provided mediation services. The PDJ denied that motion on April 23, 2018, because the case presented too many disputed facts concerning Respondents' conduct. In that order, the PDJ also rejected Respondent Gorden's claim that the People's petition should be dismissed due to her declining health, deeming Respondent Gorden's medical evidence insufficient to warrant taking any action, let alone dismissing the case.

On April 25, 2018, the PDJ ordered Respondents to produce their initial disclosures, after determining that Respondents had not met their burden under Colorado's Dispute Resolution Act to show that Respondent Gorden had acted as a mediator between the claimants and the insurance companies in the underlying matters. The PDJ also concluded that Respondent Gorden could not hide behind the Act's confidentiality protections simply by claiming to be a mediator.[1]

At the hearing from June 26 to 28, 2018, Ikeler appeared for the People, and Respondent Gorden appeared on behalf of Respondents. The PDJ heard testimony from Sarah Mehan, Andrew Crawford, Doug Hogg, Kim Richardson, Michelle Nohr, Tricia Kruse, Caroline Stewart, Tracy Trentham, and Gregory Gold, Esq.—all of whom testified by Skype videophone[2]—as well as Amy Olin, Keacha Barnes, Ayana Barnes, Tracy Garceau, Donna Scherer, Marc Levy, Esq., Heather Hackett, Esq., Molly Stout, Robert Jarvis, Renisha Huff, and Respondent—who testified in person. The PDJ entered a sequestration order, which applied to all witnesses save for Scherer, an investigator for the People, who was permitted to remain in the courtroom because she was called to testify only to authenticate certain documents.

The PDJ admitted the People's exhibits 4, 6-7, 9, 12-13, 15 (bates no. 00042), 20, 33-34 (bates nos. 00123-62), 36-38, 40, 46 (bates nos. 00195-217), 47 (bates nos. 00218-24), 48 (bates nos. 00225-49), 50, 52 (bates nos. 0259-60, 00263, 00265-66), 53 (bates nos. 00270-72), 59-61, 64-65, 67, 73, and 76-77. The PDJ also admitted Respondents' exhibits C, D, and F.

II. FINDINGS OF FACT[3]

Respondent Gorden testified that she began her mediation career at age sixteen by resolving disputes between gangs and families in her community. She said she has mediated for the past eighteen years for people who have bodily injury claims and are suffering from hardship. Respondent Gorden said, however, that she does not assist people who are undergoing continuing medical treatment or who have complex injuries.

Respondent Gorden testified that she and her husband started Affordable Auto Claims in 2014; opening a mediation company, she explained, was her dream. She is the principal of Respondent AACM, but her husband, Dewand Cooper, is the owner. Respondent AACM does not employ licensed attorneys, nor does it have any other employees, but occasionally Respondent Gorden's daughter assists her. Respondent Gorden is not licensed to practice law in Colorado, and she is not a licensed public adjuster. Respondent Gorden testified that she is a "private mediator."

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[1] The People's petition contained allegations concerning Marc Lane. In their proposed trial management order, the People withdrew their claims related to Lane.

[2] The PDJ granted the People's three pretrial motions to permit these witnesses' absentee testimony.

[3] Where not otherwise noted, these facts are drawn from testimony.

Respondent Gorden described her general practices when she is retained by a new client, including the documents she provides to the clients.[4] First, she gives each client a mediation agreement to sign.[5] This document states, in part: "I [client name] am allowing Affordable Auto Claims Mediation[,] LLC, to mediate and resolve my claim with [insurance company]."[6] She maintained that this mediation agreement gives her permission to assist clients with their claims through mediation. Second, she testified, she provides clients with a document stating that the clients—not Respondents—are responsible for their medical and hospital bills.[7] Last, she gives each client a letter stating that Respondent AACM is a "mediation company dedicated [to] resolving claims for clients before they fall into further hardships. We will try to resolve the clients['] claims within 30 days."[8] She said that she hands this letter out to members of her community, as well, to advertise her services.

According to Respondent Gorden, she charges her clients a flat fee of $1,500.00 to write a demand letter, a document processing fee of $500.00, and a mediation fee, which is a percentage of the client's settlement.[9] She said that she renegotiates these fees on a case-by-case basis after her services have concluded and that she does not always ask the clients for the full amounts.[10]

Respondent Gorden acknowledged that she does not enter into an express written contract with insurance companies to provide mediation services. Instead, she said, she sends her client's signed mediation agreement and Respondent AACM's mediation letter to the insurance company to begin negotiating a claim. Typically, the insurance company will respond in writing or by phone, which she considers the insurance company's written or verbal agreement to mediate.[11]

During her closing argument, Respondent Gorden announced that even if the Colorado Supreme Court decides to take her business name away, the court

> will never be able to take mediation in its entirety away from me because that is what I do . . . I don't really lose. I will never lose as far as providing mediation because the State of Colorado has allowed private mediators to assist with disputes, regular claims, regardless, so even if the business name disappears, mediation will never disappear from me because I have that right. So I am still

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[4] Respondent Gorden referred to her mediation customers as "clients" throughout the hearing, and the PDJ does so in this report for consistency. Respondent Gorden did not, however, refer to any of the insurance companies as her clients.

[5] *See* Ex. D. Respondent Gorden testified that this is a newer version of her mediation agreement, which contains additional language about the types of claims she handles.

[6] *See, e.g.*, Ex. 38 at 00178.

[7] Ex. C.

[8] *See* Ex. F; Ex. 61.

[9] *See, e.g.*, Ex 53 at 00272 (stating that her mediator fee is "25% for claims under $10,000" and "30% for claims over $10,000").

[10] *See, e.g.*, Ex. 53 at 00272.

[11] *See, e.g.*, Ex. 20.

a winner, I am still going to win, and I am still going to continue to assist my community with mediation in its entirety until we get resolutions.

Cheyenne Martin Matter

On June 23, 2017, Cheyenne Martin signed a contract permitting Respondents to "mediate and resolve" her third-party personal injury claim with State Farm Mutual Automobile Insurance Company.[12] Martin had suffered personal injuries in an automobile accident with a driver insured by State Farm. As a result, Martin made two visits to the emergency room, accruing over $17,000.00 in charges.[13]

Martin's claim was handled primarily by State Farm employees Sarah Mehan and Andrew Crawford. Mehan testified that Respondents sent State Farm a copy of their agreement with Martin to mediate, Respondent AACM's mediation letter, and a document that Martin signed giving State Farm permission to issue two settlement checks—one payable to herself, and a second payable to Respondent AACM.[14] All documents bore varying forms of Respondent AACM's letterhead.

Both Crawford and Mehan testified that State Farm never agreed to mediate Martin's claim using Respondent Gorden as the mediator.[15] Respondent Gorden, on the other hand, insisted that State Farm agreed to mediate with her because it accepted her documents, and because a representative called her back, spoke with her about Martin's claim, and sent her written correspondence.

Mehan also testified that on August 17, 2017, Respondents sent State Farm a demand signed by Martin, again on Respondent AACM's letterhead.[16] This settlement letter stated in part:

> I, Cheyenne Martin[,] am willing to release the State Farm Insurance Company and their insured on this claim of any future liabilities. If they are willing to take into consideration compensating me in the following for:
>
> *ER Bill Owed---------- $5,824.75
> *Physician Bill Owed----------$90.00
> *Ambulance Bill Owed----------$1,522.05
> *ER Bill Owed----------$10,282.00
> *Physician Bill Owed----------$90.00
> *Physical Pain Suffered----------$5,000.00

[12] Ex. 60.
[13] *See* Ex. 59.
[14] Exs. 60, 61, and 64.
[15] Crawford explained that when he received Martin's mediation agreement, he believed that the agreement meant that Respondent Gorden was representing Martin and that it merely gave him permission to speak with Respondent Gorden about the claim.
[16] Ex. 59.

*Mental Pain Suffered----------$2,000.00

The total amount that I am requesting on this claim is $24,808.80. If you have any questions, please contact Jalaika Gorden at Affordable Auto Claims Mediation, LLC . . . .

This is a Forty-eight (48) hour Time Sensitive Request Demand Statement.[17]

Respondent Gorden would not testify about this specific demand letter, but she said that her general practice was to draft any settlement demand letter "verbatim" from the client and to use any release language that came directly from the insurance company.[18] Respondent Gorden denied choosing which dollar amounts to place in a demand letter, insisting that her clients represent themselves and analyze their own damages. She did testify, however, that she offers her clients her professional opinion concerning the mental suffering line item. She also testified that she includes a forty-eight-hour timeframe because a lawyer advised her that under Colorado law an insurance company must respond within that timeframe.

In October 2017, State Farm settled Martin's claim for $20,000.00.[19] The check was payable only to Martin.[20] State Farm refused to list Respondents as a payee on the settlement check. Respondent Gorden was present when Martin received her settlement check, and she signed State Farm's settlement release as a witness.[21] Respondent Gorden would not disclose the fee she collected from Martin.

While handling Martin's claim, Respondent Gorden spoke several times with Crawford and Mehan. Crawford testified that he told Respondent Gorden that State Farm needed time to consider the offer, yet she continued to demand that it be reviewed within forty-eight hours. During one call, Crawford said, Respondent Gorden reported that her offer "for such a low amount" was no longer good.[22] Also during the calls, Crawford recalled, Respondent Gorden questioned State Farm's actions, including why Crawford needed medical lien information, and she insisted on speaking with his supervisors, threatened to file a complaint with the Colorado division of insurance, and demanded to be a named payee on any settlement check.[23] He said that her tone during the calls was "very rapid," "manic," and "aggressive" at times. At first, he said, he thought Respondent Gorden was a public adjuster but he soon discovered she was not.[24] According to Crawford,

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[17] Ex. 59.

[18] During her testimony, Respondent Gorden declined to answer questions specific to the Martin matter and instead testified in general about her business practices.

[19] Ex. 67; Ex. 73 at 01623.

[20] Ex. 67.

[21] Ex. 73 at 01623. Crawford testified that State Farm prepared this release.

[22] Ex. 65 at 01593, 01595.

[23] *See* Ex. 65 at 01592.

[24] Crawford testified that he spoke with State Farm's defense counsel, Marc Levy, to determine whether Respondent Gorden had engaged in the unauthorized practice of law through her representation of Martin.

Respondent Gorden was very much an advocate for Martin, noting that the two of them did not work together to reach a solution. Respondent Gorden sought a resolution only for Martin, he said.

Mehan testified that she also spoke with Respondent Gorden on several occasions between August and October 2017.[25] Mehan recalled Respondent Gorden demanding a response to her settlement offer within forty-eight hours and threatening to "go to [Mehan's] boss, to the president of claims, and the Colorado department of insurance."[26] Mehan said that she had never spoken with somebody "so pushy, and rude, and so quick to want a settlement."

According to Mehan, Respondent Gorden's tone during the calls was not typical or neutral; because it raised a "red flag," Mehan dug "a little deeper to see why [Respondent Gorden] was behaving in this manner." Mehan said that Respondent Gorden advocated "like a lawyer" for Martin by making a time-sensitive settlement demand on her behalf and forbidding Mehan from speaking with her.[27] But Respondent Gorden claims that she was merely relaying Martin's wishes. Mehan did not share that opinion: she testified that when Respondent Gorden's role in the claim was questioned, Respondent Gorden became defensive, asking for the names of "everyone at State Farm" and accusing Mehan of lying to her.[28] Mehan testified that Respondent Gorden eventually filed a formal complaint against State Farm with the Colorado Department of Regulatory Agencies ("DORA").

While Respondent Gorden was negotiating Martin's claim in August and September 2017, she made several internal complaints against State Farm based on its handling of Martin's claim. Like Mehan and Crawford, none of the State Farm employees who interacted with Respondent Gorden concerning her complaints agreed, in writing or otherwise, that she could serve as a mediator between State Farm and Martin. Nor did they feel like she was acting as a mediator.

Amy Olin, a claim team manager, testified that she handled an "escalated" complaint call from Respondent Gorden in August.[29] She said that during that call Respondent Gorden was upset with the claim handling and told Olin that she would pursue a complaint with State Farm's customer service department. Kim Richardson, an auto injury claim team

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Crawford said that he "turned over" that issue to Levy but continued to handle Martin's claim, including speaking with Respondent Gorden, in order to comply with fair claims handling practices.

[25] *See* Ex. 65.

[26] Ex. 65 at 01598.

[27] Mehan testified that she has participated in mediation approximately three to four times per year over the past thirty years. She said that State Farm sometimes hires mediators to resolve disputes when two parties disagree.

[28] Mehan testified that she saw Respondents' mediation documents in the claim file. Ex. 64. Despite this, Mehan did not believe Respondent Gorden was a traditional mediator. She said that she continued to speak with Respondent Gorden only because at the time she did not know whether Respondent Gorden was permitted under Colorado law to act for Martin.

[29] *See* Ex. 65 at 01594.

manager, also received an escalated call from Respondent Gorden in August.[30] She testified that she thought Respondent Gorden was an attorney representing Martin, in part because she referred to Martin "as her client numerous times" and advocated for Martin, discussing only Martin's needs during the call. Additionally, Richardson said that their interaction lacked the "go-between-type . . . mediation conversation, it was more my client needs to be paid, my client needs money, I need to get this done on behalf of my client, [and] when someone is a mediator they look at both sides equally." Richardson recalled that Respondent Gorden wanted to speak with upper management to move her "demand package" along as "quickly as possible." Richardson testified that Respondent Gorden's overall tone was "insistent and somewhat aggressive." As but one example, Respondent Gorden threatened to contact corporate headquarters to make a complaint because State Farm had not made an offer "right then and there."

Doug Hogg, an injury claim team manager, also received two escalated complaint calls from Respondent Gorden in August and September.[31] He remembered that Respondent Gorden was upset with State Farm's claim handling, recalling that her manner and demeanor were "forceful." He said that she did not allow "much" discussion to take place. According to Hogg, Respondent Gorden demanded to speak with his manager because she believed that State Farm had defamed and disparaged her character.

Respondent Gorden also lodged a formal complaint against State Farm with DORA. Tracy Garceau, a lead analyst with DORA, testified that she had multiple communications in August 2017 with Respondent Gorden, who said that she was "pursuing an injury claim for one of her clients." Respondent Gorden emailed Garceau on September 12, stating that her client faced homelessness, relaying her client's threat to go to "channel 9" if resolution of the claim were prolonged, and complaining that State Farm's defense counsel had attempted to contact Martin directly, even though Respondent Gorden was the "point of contact."[32] DORA eventually determined that there were no regulatory concerns with State Farm's handling of Martin's claim.

While pursuing Martin's claim, Respondent Gorden also interacted with State Farm's defense lawyers, Marc Levy and Heather Hackett. Hackett testified that she never spoke with Respondent Gorden directly but that Respondent Gorden left her a voicemail message forbidding Hackett from speaking directly with Martin.

Levy stated that he received a call from Respondent Gorden in August, asking him to write a letter authorizing State Farm to settle Martin's claim so that she could pick up her client's $20,000.00 settlement check. He told her that State Farm needed additional information about Martin's possible medical liens, but she refused to provide the

[30] Ex. 65 at 01598-99.

[31] Ex. 65 at 01577, 01593.

[32] Ex. 7. Respondent Gorden testified that either she or her daughter typed this email. She explained that she cannot do her job if she is not the point of contact.

information.[33] Levy recalled that Respondent Gorden then left voicemail messages for his law partners, accusing Levy of being rude, unprofessional, and a racist, and insisting that he was going to put her client "on the street."[34]

On August 25, Respondent Gorden emailed Levy to inquire when he would "prepare the hold harmless agreement." She suggested that her client would become homeless if the claim were not resolved that very day, and she agreed that Martin would sign a release in exchange for $20,000.00.[35] Respondent Gorden testified that the concept of a "hold harmless agreement" came from her client or the insurance company, and she was just conveying that idea. Levy insisted, however, that he does not use those "antiquated" agreements. Respondent Gorden again emailed Levy three days later, informing him that she had complained to DORA about his conduct "but not to the ARD Attorney Regulations Department at this time" and that he was "punishing [her] client mentally."[36]

Levy also offered an expert opinion in this matter. He opined that personal injury cases are very complicated and that someone representing a personal injury claimant must properly evaluate the claim, review all relevant medical records, and understand legal liability principles, such as comparative negligence and causation. According to Levy, these assessments require a great deal of legal knowledge, and a claimant who lacks the assistance of an experienced litigator risks receiving an inadequate claim settlement. For example, under Colorado law an injured party is entitled to collect the medical charges that were billed, not the amount the insurance company paid; a representative needs to know this so the client receives the appropriate monetary figure.

Dauphin Maxwell Matter

On April 28, 2016, Dauphin Maxwell hired Respondents to "mediate and resolve" his claim with the General Insurance Company stemming from his injuries in an automobile accident with a driver insured by the General.[37]

On Maxwell's behalf, Respondent Gorden spoke with the General's employees Tracy Trentham, Michelle Nohr, Caroline Stewart, and Tricia Kruse. These employees never agreed to use Respondent Gorden as a mediator to resolve Maxwell's claim. Nor did Respondent Gorden act in a neutral manner, the employees testified.

Trentham and Nohr adjusted the Maxwell claim in May and June 2016. Trentham testified that she spoke with Respondent Gorden several times during that period.[38] During those calls, Respondent Gorden presented herself as a mediator but did not allow a "three-way" discussion with Maxwell, said Trentham. Respondent Gorden simply continued to

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[33] Ex. 4.
[34] *See, e.g.*, Exs. 13 and 15.
[35] Ex. 13 at 00040; Ex. 9.
[36] Ex. 15.
[37] Ex. 38 at 00178.
[38] *See* Ex. 34 at 00130-33, 00144, 000173-75.

insist that Maxwell would be evicted if his claim were not settled immediately. According to Trentham, when she informed Respondent Gorden that Maxwell's claim needed further investigation, Respondent Gorden demanded to speak to the General's president and Trentham's supervisor. Trentham testified that Respondent Gorden also insisted that the settlement check be made payable to both Maxwell and Respondents, since, "as a mediator," she was entitled to the same payment arrangements as all Colorado attorneys. When Trentham refused to name her as a payee, Respondent Gorden threatened to file a complaint with DORA. Trentham testified that she understood a mediator to be independent and one who "handles a resolution between two parties to the claim." This is not what Respondent Gorden did, Trentham said; instead, she issued demands to the General to pay Martin.

Nohr testified that she reviewed the settlement demand Respondents sent to the General, asking for $28,035.03 in exchange for Maxwell's release of all future liability claims against the General and its insured.[39] This amount included $19,535.03 for medical bills, $5,000.00 for physical pain suffered, and $3,500.00 for mental pain suffered.[40] Nohr recalled that Respondent Gorden did not act as a neutral during their calls but rather was "geared towards Maxwell completely" and was very unprofessional and demanding. Nohr remembered that Respondent Gorden accused Nohr of incompetence and then hung up on her.

During the discussions about Maxwell's claim, Respondent Gorden lodged several complaints about the General's handling of claims. She spoke with Caroline Stewart, the regional director of claims in May 2016.[41] According to Stewart, Respondent Gorden was upset with the "speed of resolution" of the Maxwell claim. Because Respondent Gorden had demanded the policy limits, Stewart told her that Maxwell's claim could not be settled that same day. Stewart said Respondent Gorden was unhappy as a result, and she continued to lodge threats, asking to speak with Stewart's supervisor and the CEO to express her displeasure.

Tricia Kruse, a field operations manager, testified that she spoke on May 4, 2016, with Respondent Gorden, who introduced herself as a "mediator."[42] During that phone call, Kruse said, Respondent Gorden wanted to settle Maxwell's claim that same day. She tried to "intimidate and bully" Kruse into settling the claim without the necessary medical and lien documents. Kruse did not think that Respondent Gorden was acting as a "neutral" or a "mediator." According to Kruse, Respondent Gorden refused to accept that the General needed to investigate Maxwell's claim, and her aggressive tone escalated throughout the call.

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[39] Ex. 40 at 00184.
[40] Ex. 40 at 00184.
[41] *See* Ex. 34 at 00151.
[42] *See* Ex. 34 at 00154.

Keacha Barnes and Anaya Barnes Matters

Keacha Barnes ("Ms. Barnes") testified that she and her daughter Ayana Barnes ("Ayana") hired Respondents on January 18, 2017, to "mediate and resolve" their claims with Esurance Insurance Company arising from an automobile accident with one of Esurance's insureds.[43] Ms. Barnes said that Respondent Gorden prepared the mediation agreement and gave it to her to sign, which she did.[44] Ayana signed an identical document.[45]

Respondent Gorden testified that she agreed to assist the Barneses by resolving their claims through mediation. She maintained that she never spoke on their behalves but rather relayed their words "verbatim" to Esurance. She also testified that she had a verbal agreement with the "file owner" at Esurance to mediate the claims.

Ms. Barnes said that Respondent Gorden told her when they first met that she was a mediator, not a lawyer. According to Ms. Barnes, she did not understand the difference between the two because she had never been through the claims process before. She hired Respondent Gorden because she thought it would be cheaper than hiring a lawyer. During the meeting, Ms. Barnes said that she discussed with Respondent Gorden her doctor's visits, and Respondent Gorden told her that she would get all the necessary documents to send to Esurance. Ayana recalled Respondent Gorden explaining the process to get her "money for her case."

Ms. Barnes stated that Respondent Gorden had prepared another document for her to sign at the meeting, which set forth Respondents' fees as follows:

Processing & filing fees	$500.00
Demand letter	$1500.00
Mediator Fee	25% for claims under $10,000 30% for claims over $10,000

*percentage fees can be negotiated
*claim checks will be made out to the client, as well as [Respondent AACM][46]

According to Ms. Barnes, Respondent Gorden handed her this document for her signature, and they discussed the document. Ms. Barnes and Ayana also signed other documents at this meeting that gave Esurance permission to "make my settlement check payable to myself and [Respondent AACM]."[47] Ms. Barnes could not recall when certain fees would be due but knew that Respondent Gorden would take her fees from the settlement

[43] Ex. 53 at 00270.
[44] Ex. 53 at 00270.
[45] Ex. 52 at 00263.
[46] Ex. 53 at 00272.
[47] Ex. 53 at 00271; Ex. 52 at 00266.

check. Ms. Barnes testified that she also signed a release so that Respondent Gorden could get her medical records and include them in the demand letter.[48] Respondent Gorden, however, maintained that her clients request their own medical records and that she merely reviews them.

Ms. Barnes testified that in February 2017 she signed a settlement demand letter, which Respondent Gorden sent to Esurance.[49] The demand letter contained line items for Ms. Barnes's emergency room, physician, and radiology bills, $2,500.00 for "physical pain suffered," and $1,500.00 for "mental pain suffered."[50] The settlement demand totaled $6,734.17.[51] The demand also included a release of Ms. Barnes's future claims and a forty-eight-hour acceptance timeframe.[52] Ms. Barnes recalled discussing her medical bills with Respondent Gorden but not her mental suffering or the possibility of future medical problems caused by the accident. Ms. Barnes was unsure where the $2,500.00 amount for "physical pain suffered" came from; she knew that it was not her suggestion, however, so she assumed that Respondent Gorden determined that amount. Likewise, she was not aware of how they arrived at the "mental pain suffered" sum. Because Respondent Gorden was her mediator, however, Ms. Barnes "figured" that she was "taking care of all of this" for her. She did not recall whether Respondent Gorden discussed the settlement amount with her but did state that Respondent Gorden did not pressure her to accept any settlement from Esurance.

Ayana said that she also signed a similar settlement demand letter, which she received from someone at Respondent AACM.[53] She testified that she signed this letter so that a demand could be made to Esurance to pay her claim. This letter demanded $4,530.80 in exchange for a release of her future claims.[54] The demand letter included the bills for Ayana's emergency room and physician visits, in addition to $2,500.00 for physical pain suffered and $1,000.00 for mental pain suffered.[55] It also included a forty-eight-hour acceptance timeframe.[56] Ayana did not remember talking about any of these amounts with Respondent Gorden.

Ms. Barnes testified that she and Ayana later met with Respondent Gorden to sign a release to receive the settlement check. Ms. Barnes's total settlement was $4,084.74.[57] But she recalled receiving only $1,730.00 from the total settlement after Respondent Gorden deducted her fees.

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[48] *See* Ex. 46.
[49] Ex. 46 at 00202.
[50] Ex. 46 at 00202. Ms. Barnes's medical bills were sent along with the demand letter. Ex. 46.
[51] Ex. 46 at 00202.
[52] Ex. 46 at 00202.
[53] Ex. 46 at 00217.
[54] Ex. 46 at 00217.
[55] Ex. 46 at 00217.
[56] Ex. 46 at 00217.
[57] Ex. 50 at 00253.

Ayana testified that she likewise signed Esurance's release in the presence of Respondent Gorden, who explained to her what the language in the release meant.[58] Ayana recalled receiving no more than $500.00 from her total settlement of $1,530.50.[59] Though Respondent Gorden refused to largely testify about this matter, she generally disagreed with the Barneses' testimony about the settlement amounts they received, attesting that in similar circumstances she would normally receive between $200.00 and $450.00 in fees.

Molly Stout is the adjuster who handled these claims. She testified that she received a fax from Respondent AACM on January 18, 2017, and that it included the Barneses' mediation agreements, Respondent AACM's mediation letter, Ayana's medical release, permission from the Barneses to name Respondent AACM on the settlement checks, and a copy of Ms. Barnes's fee agreement with Respondents.[60] Stout also recalled reviewing the Barneses' demand letters.[61] According to Stout, she told Respondent Gorden that she needed more medical information and time to review the Barneses' claims, but Respondent Gorden was not satisfied. Stout also said that during their calls Respondent Gorden's tone was "urgent and aggressive," emphasizing that she wanted the settlement "to be done and a priority."

Stout said that she thought Respondent Gorden's coverage demands were too high for the treatment and damages her clients had suffered, so they negotiated the numbers back and forth.[62] She also remembered discussing with Respondent Gorden the Barneses' hardships, including lost wages and Ayana's need for counseling, for which Respondent Gorden wanted advance payment.[63]

Stout testified that she spoke with Respondent Gorden because of the signed mediation agreement. Even so, Stout said, Esurance never agreed that Respondent Gorden could act as a mediator between Esurance and the Barneses. Stout indicated that Respondent Gorden did not like the way the claim was handled, and she threatened to file a complaint with DORA.

Robert Jarvis, a unit manager, said that Respondent Gorden presented herself as a mediator and acted professionally on the phone with him. He testified that he spoke with Respondent Gorden many times. She discussed her clients' claims and demanded settlement, occasionally asking for more money than her initial offer.[64] Jarvis testified that she planned to file a complaint with DORA about his conduct and wanted his supervisor's name. He said Respondent Gorden did not present Esurance with a mediation agreement, but he was satisfied that she could act on behalf of her clients in light of their agreement.

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[58] Ex. 47 at 00222.
[59] Ex. 50.
[60] Exs. 52-53.
[61] Ex. 46 at 00202, 00217.
[62] *See* Ex. 48 at 00245 (indicating a coverage dispute).
[63] *See* Ex. 48 at 00246. According to Stout, Respondent told her that Ms. Barnes had lost five days of work but would not reveal where Ms. Barnes worked.
[64] *See* Ex. 48 at 00247-48 ("She kept asking for a higher amount.").

After discussing the claims with Respondent Gorden, Jarvis testified, he drafted a settlement letter and release and sent it to Ms. Barnes in care of Respondent AACM.[65]

Additional Expert Witness Testimony

Attorney Gregory Gold testified for the People as an expert in third-party personal injury claims negotiations. He opined that, by nature, third-party personal injury claims are complex and require a lawyer's analysis of liability, damages, and subrogation. Gold also noted that an experienced insurance lawyer would spot several issues during an initial client interview, such as present and future damages or multiple coverage issues. He further testified that interviews of witnesses may constitute attorney work product, though a nonlawyer representative's notes would not be subject to work product protections.

Gold discussed several other complexities inherent in personal injury claims that require a lawyer's expertise: a lawyer would know to request reimbursement for the amount of medical expenses that were actually billed versus those actually paid from the insurance company; a lawyer would be aware of Colorado's collateral source rules, issues concerning lost wages, issues concerning the impact of brain injuries, Colorado's statutory damages caps, subrogation procedures, and the importance of Medicare and Medicaid liens; and a lawyer would remain up-to-date on personal injury law, including knowledge of the relevant statutes that might affect the claimants' damages. According to Gold, if a claimant rushes to settle a claim, hospital liens and future damages may be omitted from the settlement, harming both the claimant and medical institutions.

III. UNAUTHORIZED PRACTICE OF LAW CLAIMS

The Colorado Supreme Court, which has exclusive jurisdiction to define the practice of law within this state,[66] restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.[67] Colorado Supreme Court case law holds that 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.[68]

In the analysis below, the PDJ considers whether Respondents acted as representatives of the claimants and whether Respondents' actions were akin to third-party

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[65] Ex. 47 at 00219-20.

[66] C.R.C.P. 228.

[67] *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."); *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.").

[68] *See Denver Bar Ass'n v. Pub. Utils. Cmm'n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); *see also People v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (same).

public adjusting and thus constitute the unauthorized practice of law in Colorado. The PDJ also addresses Respondents' mediation defense.

Representative Capacity

The PDJ first examines whether Respondents were acting in a representative capacity on behalf of their clients. The PDJ concludes that Respondents advocated for their clients and thus engaged in the unauthorized practice of law.

Although a nonlawyer is permitted to complete forms and deliver paperwork to insurance companies, engaging in settlement discussions and making settlement demands upon an insurer is prohibited as the unauthorized practice of law.[69] By making direct contacts with insurers, placing a timeframe on her demands, including binding release language, and negotiating settlements, Respondent Gorden affected the legal rights of the claimants, which requires legal knowledge and skill.[70] Moreover, Respondents' clients placed their trust in Respondent Gorden's judgment and skill to negotiate their claims with the insurers and to obtain settlements. Respondent Gorden negotiated all aspects of her clients' claims, including the monetary and non-economic value of their claims. She used a percentage fee-based contract for her services—paid only by her clients—and instructed the insurers to make checks payable to both Respondents and their clients. As expert witnesses Levy and Gold attested, the landscape of third-party personal injury claim negotiations is complex, requiring the legal skills necessary to evaluate the party's claim. Accordingly, the PDJ finds that Respondents' advocacy in these three matters constitutes the unauthorized practice of law.

Third-Party Public Adjusting

To shed further light on the nature of Respondents' representative activities, the PDJ examines these activities through the lens of the legal standards governing public insurance adjusting. As determined above, Respondents were representing clients; the term for their services is public insurance adjusting, or public adjusting.[71] Public adjusting can include varied activities, from filling out paperwork to negotiating claims. These activities can be

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[69] *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) ("Analyzing the value of a client's personal injury claim, making demands on an insurer for setting a client's claim, and advising the client about whether to settle for a certain amount are well within the ambit of the practice of law."); *Unauthorized Practice of Law Comm. v. Jansen*, 816 S.W.2d 813, 816 (Tex. App. 1991) (holding that although providing an estimate of property damage and filing out appropriate forms does not constitute the practice of law, discussions or negotiations with insurance companies into coverage matters does entail the practice of law); *In re Bodkin*, 21 Ill.2d 458, 173 N.E.2d 440, 442 (1961) (settling of personal injury action was "practice of law" even though insurer had admitted liability and was willing to pay claim).

[70] *See Denver Bar Ass'n*, 154 Colo. at 279, 391 P.2d at 471 (indicating that the exercise of legal knowledge and skill constitutes the practice of law).

[71] *See* James McLoughlin, "Activities of Insurance Adjusters as Unauthorized Practice of Law," 29 A.L.R.4th 1156 § 2 (1984 & supp. 2014) (explaining that "[t]he basic function of an insurance adjuster is to ascertain the amount of value or loss of a claim made against an insurer" and that adjusters may work either for insurance companies or on behalf of insurance claimants).

performed on either a first-party basis or a third-party basis.[72] First-party adjusting occurs when a public adjuster assists an insured client to file a claim with the client's *own* insurance company.[73] Third-party adjusting, on the other hand, occurs when a public adjuster assists an injured client to assert a claim under an insurance contract against a *third party's* insurance company.[74] In these matters, Respondents acted as a third-party adjuster, since Respondent Gorden assisted her clients to file claims with the insurers of the drivers who allegedly injured her clients.[75]

Like a number of other states, Colorado has a statute and regulations governing public adjusting, but this scheme governs only first-party public adjusters and is limited to adjusting real or personal property loss.[76] Colorado law requires first-party public adjusters to obtain a state license and to meet various standards.[77] It appears that no legal authority in Colorado governs third-party public adjusting or addresses whether any form of public adjusting constitutes the unauthorized practice of law.

Other jurisdictions, however, have considered these issues. In *Linder v. Insurance Claims Consultants,* the South Carolina Supreme Court surveyed relevant case law and enumerated practices that do and do not amount to the unauthorized practice of law.[78] The *Linder* court ruled the following activities permissible: providing an estimate of property damage and repair costs, preparing a contents inventory, preparing sworn statements on proof of loss, presenting a claim and delivering the necessary paperwork and data to the insurance company, and negotiating with the insurance company as to competing property-damage valuations.[79] On the other hand, the *Linder* court concluded that a layperson cannot advise clients of their rights, duties, or privileges under an insurance policy regarding matters requiring legal skill or knowledge, advise clients on whether to accept a settlement offer from an insurance company, become involved, in any way, with a coverage dispute between the client and the insurance company, or use advertising that would lead clients to believe that public adjusters provide services that require legal skill.[80]

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[72] *Utah State Bar v. Summerhayes & Hayden, Pub. Adjusters*, 905 P.2d 867, 868 (Utah 1995).
[73] *Id.*
[74] *Id.* at 870.
[75] Adjusting by persons employed by insurance companies involves separate legal standards. "[C]ourts have generally rejected the contention that adjusters employed by or representing insurers were engaged in the unauthorized practice of law by undertaking activities closely connected with the determination of value or loss . . . ." McLoughlin, "Activities of Insurance Adjusters as Unauthorized Practice of Law," 29 A.L.R.4th 1156 § 2.
[76] C.R.S. § 10-2-103 (8.5)(a) (defining the term "public adjusters" to cover only first-party adjusters solely in relation to claims arising under insurance contracts that insure real or personal property).
[77] C.R.S. § 10-2-417; *see also* 3 Colo. Code Regs. § 702-1:1 (setting forth licensure and other regulations governing public adjusters).
[78] 560 S.E.2d 612, 617-22 (S.C. 2002). *Linder* involved first-party adjusting, though the court considered case law involving both first-party and third-party adjusting. *Id.* at 616-22.
[79] *Id.* at 621.
[80] *Id.*

The analysis in *Linder* is largely consistent with case law from other jurisdictions.[81] It is widely agreed that a layperson may perform the basic tasks associated with first-party public adjusting.[82] But under the analysis set forth in *Linder* and other cases, third-party adjusting amounts to the unauthorized practice of law.[83] This is because the third party's insurer is responsible for paying a claim only if the third party was legally at fault.[84] So, a third-party adjuster "must determine the extent of the liability, rights, and duties of the parties before attempting to resolve the issue of a settlement amount."[85] As the Utah Supreme Court has explained,

> [A]fter making an objective valuation of damages, an adjuster, to adequately serve the client's interests, must make a judgment of the extent to which that valuation should be compromised in settlement negotiations. Such a determination necessarily requires legal knowledge and skill and the application of abstract and complex legal principles—such as comparative fault, the elements of negligence, and rules governing liability—to the concrete facts of a particular claim. Even in an uncomplicated case, fair settlement of a claim requires knowledge of the underlying legal principles that reveal the strength of the claimant's bargaining position. It is only after making such legal judgments that an adjuster can attach an educated and fair value to the client's claim and negotiate a fair settlement.
>
> Moreover, in the negotiation of a third-party claim, an adjuster must consider legal principles that may affect a claimant's legal ability to pursue the claim, such as statutes of limitation, jurisdictional issues, and affirmative defenses. Thus, even though adjusters do not perform services for their clients in a court of law, the practice of third-party adjusting requires knowledge and application of legal principles and involves advising, counseling, and assisting clients in connection with their legal rights and duties. In short, third-party adjusting is the practice of law.[86]

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[81] *See also La. State Bar Ass'n v. Carr & Assocs., Inc.*, 15 So. 3d 158, 170 (La. App. 2009) (holding that a layperson engaged in the unauthorized practice of law when he advised clients how to redress legal wrongs under their insurance policies, negotiated settlements, and contacted insurers to discuss the merits of clients' claims).

[82] Michael C. Jordan, *Comment, Unauthorized Practice of Law by Insurance Claim Adjusters*, 10 J. Legal Prof. 171, 174-75 (1985).

[83] *See, e.g., Cincinnati Bar Ass'n v. Sershion*, 934 N.E.2d 332, 333-34 (Ohio 2010) (holding that it is the unauthorized practice of law to present "claims of bodily injury under liability policies" and to assert "claims for extra-contractual damages under other policies of insurance"); *Dauphin Cnty. Bar Ass'n v. Mazzacaro*, 351 A.2d 229, 234 (Pa. 1976) (holding that third-party representation by lay adjusters is the unauthorized practice of law); *State ex rel. Stovall v. Martinez*, 996 P.2d 371, 375 (Kan. App. 2000) (finding that third-party public adjusting "unquestionably" qualifies as the practice of law); 3 Couch on Ins. § 48:66 (2017) ("An adjuster who represents him or herself in the public as able to compromise, adjust, or settle claims generally is engaged in the practice of law. . . .").

[84] Jordan, *Comment, Unauthorized Practice of Law by Insurance Claim Adjusters*, 10 J. Legal Prof. at 175.

[85] *Summerhayes & Hayden*, 905 P.2d at 868-69.

[86] *Id.* at 870; *see also Mazzacaro*, 351 A.2d at 234 (explaining that to negotiate with a third party over valuation of damages requires an understanding of the likelihood that liability can be established, which in turn requires

The PDJ finds case law from sister jurisdictions both consistent and well-reasoned. The analysis in these cases makes clear that third-party adjusting involves 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," as the Colorado Supreme Court has defined the practice of law.[87] This conclusion is bolstered by the Colorado Supreme Court's opinion in *In re Boyer*, where a suspended lawyer was held in contempt for analyzing the value of clients' injuries, making demands on liability insurers, and negotiating with the insurers to settle clients' claims, among other actions.[88] Although the standards governing suspended lawyers may differ somewhat from those governing laypersons, *In re Boyer* supports the determination that third-party adjusting is the practice of law. In sum, the PDJ concludes that third-party public adjusting by laypersons contravenes Colorado's unauthorized practice of law rules.[89]

Here, Respondent Gorden acted as a third-party adjuster when she represented Martin, Maxwell, and the Barneses in their negotiations with the insurance companies for the other drivers, when she directly communicated with those companies about her clients' injuries, when she made monetary demands upon those companies, and when she negotiated the settlements of her clients' claims. She analyzed the value of her clients' injuries by making monetary demands for medical expenses, seeking non-economic damages of physical and mental pain and suffering, and negotiating with Stout the value of her clients' claims amidst a coverage dispute. By acting as third-party adjusters and holding themselves out to the public as such (even while labeling their services as those of a private mediator or mediation service), Respondents engaged in the unauthorized practice of law.

Respondents' Mediation Defense

Finally, the PDJ addresses Respondents' mediation defense. Respondents argue that they did not engage in the unauthorized practice of law but rather resolved disputes through mediation between their clients and insurance companies. They also contend that the insurance companies acquiesced to mediation by accepting their mediation agreements and continuing to negotiate with them.

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understanding of tort law principles, evidentiary rules, and the relative merits of a case); *La. Claims Adjustment Bureau, Inc. v. State Farm Ins. Co.*, 877 So. 2d 294, 299 (La. App. 2004) (determining that adjusters engaged in the unauthorized practice of law when they assessed clients' claims and advised clients as to available causes of action, since such advice requires an understanding of whether a case has merit).

[87] *See Pub. Utils. Cmm'n*, 154 Colo. at 279, 391 P.2d at 471; *Shell*, 148 P.3d at 171.

[88] 988 P.2d at 626.

[89] The PDJ also notes that he followed this line of legal reasoning in *People v. Banks*, in determining that third-party public adjusting by laypersons contravened Colorado's unauthorized practice of law rules and in recommending that the respondent be enjoined from the unauthorized practice of law for third-party public adjusting. *See* case number 14SA169, "Order Granting Petitioner's Motion for Judgment on the Pleadings Under C.R.C.P. 12(c) and Report of Hearing Master Pursuant to C.R.C.P. 236(a)" (Oct. 3, 2014). This recommendation was accepted by the Colorado Supreme Court on November 10, 2014. *See* case number 14SA169, "Order of Injunction" (Nov. 10, 2014).

It is undisputed that in Colorado, nonlawyer mediators are not required to hold a license or certificate.[90] Generally, mediation is not the practice of law, but under some circumstances it may be considered the unauthorized practice of law. For instance, laws and rules prohibiting the unauthorized practice of law may restrict the mediator's ability to discuss legal issues and draft settlement agreements.[91] A person may not hide behind the pretext of offering mediation if the person is actually providing legal services.[92]

The Colorado Dispute Resolution Act governs the use of mediation as an alternative to litigation.[93] The Act applies to all mediation services conducted in the state, including those conducted by a private mediator or organization.[94] The Act defines mediation as "an intervention in dispute negotiations by a trained *neutral* third party with the purpose of assisting the parties to reach their own solution."[95] Mediation services means "a process by which parties involved in a dispute, whether or not an action has been filed in court, agree to enter into one or more settlement discussions with a mediator in order to resolve their disputes."[96] The term "mediator" means "a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives."[97]

Under these standards, the PDJ finds that Respondents were not acting as mediators.

First, no insurance company agreed to mediate with Respondents. It is a fundamental concept of contract law that the parties to an agreement must have a meeting of the minds.[98] Here, there was no such meeting of the minds that Respondents would serve as mediators. The insurance companies did not seek out Respondents' services or hire them to help solve a dispute with the claimants. Rather, it was Respondents who intervened in the claims by initiating direct contact with the insurance companies on behalf of their clients. Nor can the PDJ find that by communicating with Respondent Gorden, the insurance companies impliedly acquiesced to mediation; it is clear that the employees worked with her as a representative of the claimants.

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[90] *See In re Boyer*, 988 P.2d at 627; *see generally* Frank L. McGuane Jr. & Kathleen A. Hogan, *Risks*, 20 Colo. Prac. Family Law & Practice § 36:4 (2d ed. 2018); Sarah R. Cole et al., *Unauthorized Practice of Law by Non-Lawyer Mediators*, 1 Mediation: Law, Policy and Practice § 10:10 (2018 update).

[91] *See* Robert E. Benson, *Mediation as the Practice of Law*, Arb. L. Colo. § 24.5.5 (3d ed. 2017).

[92] *See Cincinnati Bar Ass'n v. Jansen*, 5 N.E.3d 627, 631-32 (Ohio 2014) (dismissing respondents' arguments in an unauthorized practice of law matter that they provided neutral mediation where their business practices belied that claim); *cf. In re Bright*, 171 B.R. 799, 803 (Bankr. E.D. Mich. 1994) (holding that a disclaimer that a nonlawyer was not providing legal services was irrelevant if in fact the nonlawyer did provide legal services).

[93] C.R.S. § 13-22-302.

[94] C.R.S. §§ 13-22-303, 312.

[95] C.R.S. § 13-22-302(2.4) (emphasis added).

[96] C.R.S. § 13-22-302(3).

[97] C.R.S. § 13-22-302(4).

[98] *See Sunshine v. M.R. Mansfield Realty, Inc.*, 575 P.2d 847, 849 (Colo. 1978) ("The general rule is that when parties to a contract ascribe different meanings to a material term of a contract, the parties have not manifested mutual assent, no meeting of the minds has occurred, and there is no valid contract.").

Next, Respondents' services were not neutral. For instance, Respondents' mediation agreements were one-sided and required only the claimants to pay Respondents' fees based on a percentage of their settlement recovery. This payment structure inherently demonstrates the skewed incentive structure for Respondent Gorden at play in these discussions. The more money the claimants settled for, the more money Respondent Gorden would receive. She thus had every incentive to press their case forcefully and as aggressively as possible. Respondent Gorden also forbade the insurance companies from speaking with her clients, demanding instead to be their point of contact, much like a lawyer. She even asked to be named as a payee on settlement checks to cover her fee arrangement, reasoning that Colorado attorneys were permitted to do so. Most telling, Respondent Gorden lodged several complaints both internally and with DORA against each insurance company concerning the companies' claims handling practices. Threatening one party to induce a quicker settlement demonstrates an absence of neutrality.

As further evidence of partiality, Respondents submitted time-sensitive settlement demands to insurance companies on behalf of the claimants. Respondent settlement discussions were biased, favored her clients' interests, and did not take into account the interests of the insurance companies. As one example, she refused to comply with Levy's request for medical lien details and became irate when companies sought additional information.

Finally, Respondent Gorden advocated for her clients in a role incompatible with that of a neutral third party. She requested and reviewed her clients' medical bills and advised Ms. Barnes about which medical documents to send to the insurance company. Respondent Gorden negotiated settlements on behalf of her clients, including negotiating a coverage dispute with Stout and demanding that her clients be compensated for lost wages and counseling services. She drafted settlement letters that included release language, relinquishing her clients' future liability claims against the insurance companies and their insureds. Respondents' demands as a whole included an assessment of their clients' damages, including economic and noneconomic damages. In sum, the PDJ concludes that Respondents' conduct was not neutral mediation and that their defense fails as a matter of law.

IV. FINE, RESTITUTION, AND COSTS

Turning to the matter of a fine, C.R.C.P. 236(a) provides that if a hearing master finds that a respondent has engaged in the unauthorized practice of law, the hearing master shall 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 request that the PDJ recommend the minimum fine of $250.00 per incident, or $1,000.00. In assessing fines for the unauthorized practice of law, 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.[99] In this case, Respondents engaged in four instances of unauthorized activity, but there is no evidence of any malice or bad faith. The PDJ recommends that Respondents be fined $250.00 for each instance, or $1,000.00, for engaging in the unauthorized practice of law.[100]

The People also request awards of restitution in the amount of $2,354.74 payable to Keacha Barnes and in the amount of $1,030.05 payable to Ayana Barnes. These amounts reflect the fees they paid to Respondents for their services. The People's request is supported by evidence adduced at the hearing.[101] Because the Colorado Supreme Court has deemed it appropriate to award restitution of any fees received for the unauthorized practice of law,[102] the PDJ finds that restitution is warranted here.

Finally, the People ask that Respondents be ordered to pay $789.00 in costs to cover the People's administrative fee and service of process fees. Relying on C.R.C.P. 237(a), the PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess $789.00 in costs against Respondents.[103]

V. RECOMMENDATION

The People urge the PDJ to recommend that the Colorado Supreme Court issue a legal ruling regarding third-party public adjusting. Because of the lack of directly applicable legal authority within Colorado on point, the PDJ finds the People's request well taken. The PDJ **RECOMMENDS** that the Colorado Supreme Court specifically **FIND** that third-party public adjusting is the unauthorized practice of law in Colorado.

The PDJ also **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondents engaged in the unauthorized practice of law and **ENJOIN** Respondents from the unauthorized practice of law, including the following:

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[99] *People v. Adams*, 243 P.3d 256, 267-68 (Colo. 2010).

[100] The Keacha Barnes and Ayana Barnes matters are considered here as two separate matters because they each signed a fee agreement with Respondents, and Respondents pursued their individual claims on their behalves.

[101] The uncontroverted testimony showed that after Respondents' fees were deducted, Ms. Barnes received only $1,730.00 from her $4,084.74 settlement, and Ayana received only $500.00 from her $1,530.50 settlement. While exhibit 47 (bates nos. 00223-24) ostensibly consists of invoices that Respondents sent to Ms. Barnes and Ayana for their fees ($350.00 for Ayana and $340.00 for Ms. Barnes), these documents were not admitted for the truth of the matter asserted. Also, no testimony was elicited from Respondents or the Barneses about how these two documents were generated, whether they were sent to the Barneses for payment, whether the Barneses paid the listed amounts, or why these documents were sent to Esurance. In determining the appropriate restitution amount, the PDJ deems Ms. Barnes's and Ayana's testimony about the settlement amount they received after Respondents deducted their fees to be the most credible evidence as to restitution.

[102] *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering nonlawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

[103] *See* C.R.S. § 13-16-122 (setting forth an illustrative list of categories of "includable" costs in civil cases).

- Providing legal services, such as advising or counseling clients in a manner that constitutes the unauthorized practice of law, including giving advice on economic and noneconomic damages, such as physical or mental pain suffered; presenting claims of bodily injury to insurers under liability policies; advising clients of their rights, duties, or privileges under an insurance policy when such advice requires any legal skill or knowledge; advising clients whether to accept a settlement offer from an insurance company; advising clients whether to release claims; and becoming involved in any way in a coverage dispute between the client and insurance company;
- Participating in the formation, ownership, direction, or control of a company that offers or provides legal services as described above;
- Having any contact with insurers to settle clients' bodily injury claims against the insurers by negotiating the legal aspects of clients' claims, or by negotiating with insurers the monetary value of clients' claims;
- Instructing insurance companies to make checks payable to Respondents rather than payable only to Respondents' clients;
- Accepting or collecting a fee based on a percentage of any parties' settlement recovery;
- Holding themselves out as being able to mediate, negotiate, or settle insurance claims for bodily injury on a single party's behalf; and
- Advertising in a manner that would lead clients to believe that Respondents offer services requiring legal knowledge or skill as described above, i.e., stating that they can resolve bodily injury claims for clients with insurance companies.

The PDJ also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondents, jointly and severally, to pay **RESTITUTION** of $2,354.74 to Keacha Barnes and **RESTITUTION** of $1,030.05 to Ayana Barnes; requiring Respondents, jointly and severally, to pay a **FINE** of $1,000.00; and requiring Respondents, jointly and severally, to pay **COSTS** of $789.00.

Any party may file objections to this report with the Colorado Supreme Court within twenty-eight days of today's date or as otherwise ordered by the Colorado Supreme Court.[104]

DATED THIS 1st DAY OF AUGUST, 2018.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[104] C.R.C.P. 236(b).

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