

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 25, 2015 CASE NUMBER: 2014SA278
Original Proceeding in the Unauthorized Practice of Law 14UPL 019	
Petitioner: The People of the State of Colorado, v. Respondents: Edward Smith and E Anthony and Associates LLC.	Supreme Court Case No: 2014SA278
ORDER OF COURT	

Upon consideration of the Amended Order Entering Default Judgment Pursuant to C.R.C.P. 55(b) and Report of Hearing Master Pursuant to C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Respondents, EDWARD SMITH and E. ANTHONY and ASSOCIATES, LLC, a delinquent Colorado limited liability company shall be, and the same hereby are, ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado.

IT IS FURTHER ORDERED that Respondents, EDWARD SMITH and E. ANTHONY and ASSOCIATES, LLC, jointly pay \$1,000.00 in RESTITUTION to A&B.

IT IS FURTHER ORDERED that said Respondents EDWARD SMITH and E. ANTHONY and ASSOCIATES, LLC jointly are assessed costs in the amount of \$176.00. 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 on EDWARD SMITH in the amount of \$250.00.

IT IS FURTHER ORDERED that a fine be imposed on E. ANTHONY and ASSOCIATES, LLC in the amount of \$250.00.

BY THE COURT, MARCH 25, 2015.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p>Petitioner: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondents: EDWARD SMITH and E. ANTHONY AND ASSOCIATES, LLC, a delinquent Colorado limited liability company</p>	<p>Case Number: 14SA278</p>
<p>AMENDED¹ ORDER ENTERING DEFAULT JUDGMENT PURSUANT TO C.R.C.P. 55(b) AND REPORT OF HEARING MASTER PURSUANT TO C.R.C.P. 236(a)</p>	

This matter is before the Presiding Disciplinary Judge (“the PDJ”) on a “Motion for Default Judgment,” filed on January 5, 2015, by Kim E. Ikeler of the Office of Attorney Regulation Counsel (“the People”). Edward Smith and E. Anthony and Associates, LLC, a delinquent Colorado limited liability company (“Anthony and Associates”) (“Respondents”) did not file a response.

I. PROCEDURAL HISTORY

On September 15, 2014, the People filed a “Petition for Injunction,” alleging that Respondents engaged in the unauthorized practice of law. On September 17, 2014, the Colorado Supreme Court issued an “Order to Show Cause,” directing Respondents to answer in writing and show cause within twenty-one days of service why they should not be enjoined from the unauthorized practice of law. The People filed a proof of service on October 9, 2014. Respondents did not respond to the petition or the show cause order.

On November 13, 2014, the Colorado Supreme Court issued an “Order of Court,” referring this matter to 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). On November 18, 2014, the PDJ issued a show cause order pursuant to C.R.C.P. 234-236, directing Respondents to

¹ Having reviewed “Petitioner’s Request to Amend This Court’s Order Entering Default Judgment,” filed by the People on February 12, 2015, the PDJ **GRANTS** the People’s motion to modify its order entering default judgment and issues this amended order to recommend that the Colorado Supreme Court award restitution.

answer the People's petition by December 1, 2014,² and warning Respondents that if they failed to do so, the PDJ could enter default pursuant to C.R.C.P. 55(a). Neither Respondent complied with that order. The PDJ entered default against both Respondents on December 30, 2014, deeming all the allegations in the petition admitted.

II. PETITIONER'S MOTION FOR DEFAULT JUDGMENT

The People have followed the procedure for default judgments set forth in C.R.C.P. 55 and 121 sections 1-14 by showing valid service on Respondents; submitting an affidavit indicating that venue is proper and that Respondents are not minors, incapacitated persons, officers of the state, or in the military;³ and filing a statement of costs.⁴ Accordingly, the PDJ **GRANTS** Petitioner's "Motion for Default Judgment."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Next, the PDJ determines that the allegations of the People's petition, which are summarized below, establish Respondents engaged in the unauthorized practice of law. The PDJ issues the following report to the Colorado Supreme Court pursuant to C.R.C.P. 236(a).

Factual Findings

Smith is not licensed to practice law in the State of Colorado or any other state.⁵ He is the principal of Anthony and Associates.⁶ Anthony and Associates does not employ licensed attorneys.⁷ The last known address of Smith and Anthony and Associates is 999 18th St., Denver, Colorado 80202.⁸ Respondents maintain a website, www.eanthonyandassociates.com, which offered to prepare Chapter 7 bankruptcy forms, write motions and discovery requests, draft lease agreements, draft nondisclosure agreements, prepare wills and powers of attorney, and conduct legal research.⁹ Anthony and Associates purveyed paralegal services to the public.¹⁰

Athletics & Beyond ("A & B") is a Colorado nonprofit corporation that promotes programs that encourage young people in the Denver metropolitan area to achieve

² Respondents were also advised that business entities may appear in Colorado courts only through a licensed attorney. See *United Sec. Corp. v. Pantex Pressing Mach.*, 98 Colo. 79, 85, 53 P.2d 653, 656 (1935) ("a corporation can appear in a court of record only by an attorney at law"); *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 588, 216 P. 718, 719 (1923) ("a corporation can only appear by attorney"); *Gilley v. Shoffner*, 345 F. Supp. 2d 563, 566 (M.D.N.C. 2004) (collecting cases and holding that the rule requiring corporations to appear only through licensed counsel applies to all forms of business entities, including limited liability companies).

³ Petitioner's Mot. for Default J. Ex. C.

⁴ Petitioner's Mot. for Default J. Ex. B.

⁵ Pet. ¶ 2.

⁶ Pet. ¶ 3.

⁷ Pet. ¶ 7.

⁸ Pet. ¶¶ 1, 4.

⁹ Pet. ¶ 6.

¹⁰ Pet. ¶ 5.

excellence in both athletics and academics.¹¹ In December 2012, Sara Kemis requested help from A & B in raising funds to repair a house in which her father, Stewart Kemis, lived.¹² A & B helped to raise approximately \$14,000.00 for the project.¹³ A corporate donor contributed \$13,000.00.¹⁴ Ms. Kemis and A & B signed a Memorandum of Agreement regarding the use of funds collected for the project.¹⁵ A & B took a ten percent administrative fee.¹⁶

When her father died, Ms. Kemis was appointed as his personal representative.¹⁷ Thereafter a dispute arose between Ms. Kemis and A & B as to the scope of the work for which A & B was required to pay and the documentation Ms. Kemis was required to provide in support of disbursements.¹⁸ In July 2013, Ms. Kemis and R.J. Ferrari made comments on Facebook that officers of A & B considered defamatory.¹⁹ A & B asked Smith to draft a cease and desist letter to Ferrari.²⁰

On July 22, 2013 Smith wrote a letter to Ferrari.²¹ The signature block displayed Smith's signature, on behalf of Anthony and Associates.²² The letter introduced "this firm" as the representative of A & B and persons associated with it.²³ Smith also directed Ferrari to **"CEASE AND DESIST ALL DEFAMATION OF Athletics & Beyond (A & B's) CHARACTER AND REPUTATION"** in this letter.²⁴ The letter accused Ferrari of "spreading false, destructive and defamatory rumors about this respected organization and contacting some of its youth participants in reference to a financial matter being handled by the board"²⁵ Furthermore, the language of the letter set forth what purported to be a legal definition of defamation in Colorado and demanded that within ten days Ferrari provide A & B with written assurance that he would cease and desist from further defamation of A & B and persons associated with it.²⁶ Respondents threatened that if Ferrari did not provide such assurances, A & B would sue Ferrari.²⁷ Respondents also invited Ferrari or his counsel to communicate with Respondents regarding the dispute.²⁸

¹¹ Pet. ¶¶ 9-10.

¹² Pet. ¶ 11.

¹³ Pet. ¶ 12.

¹⁴ Pet. ¶ 13.

¹⁵ Pet. ¶ 14.

¹⁶ Pet. ¶ 15.

¹⁷ Pet. ¶¶ 17-18.

¹⁸ Pet. ¶ 20.

¹⁹ Pet. ¶¶ 21-22.

²⁰ Pet. ¶ 23.

²¹ Pet. ¶ 24.

²² Pet. ¶ 25.

²³ Pet. ¶ 26.

²⁴ Pet. ¶ 27.

²⁵ Pet. ¶ 28.

²⁶ Pet. ¶¶ 29-30.

²⁷ Pet. ¶ 31.

²⁸ Pet. ¶ 32.

Smith also drafted a letter dated July 24, 2013, to be sent by the Board of Directors of A & B to Ms. Kemis.²⁹ The letter stated that Ms. Kemis had “refused Specific Performance pursuant to the Memorandum of Understanding (MOU) dated December 7, 2010² [sic] between Sarah [sic] Kemis on behalf of Stewart Kemis (Deceased) and Athletics & Beyond (A & B).”³⁰ The letter also provided notice that Ms. Kemis was in breach of the MOU, set forth the bases of the alleged breach, and unilaterally terminated the MOU immediately.³¹ On July 25, 2013, Respondents drafted and Smith signed a “cease and desist” letter addressed to Ms. Kemis, which is substantially identical to the cease and desist letter sent to Ferrari on July 22, 2013.³²

On July 26, 2013, Anthony and Associates entered into a Consultant/Paralegal Contract Agreement with A & B.³³ In it, Anthony and Associates agreed that its paralegals would provide services including preparation of legal documents, preparation of discovery responses, drafting of interrogatories, legal research, summarizing deposition transcripts, case review and analysis, drafting of demand letters, incorporation of for-profit and non-profit organizations, formation and dissolution of corporations, limited liability companies and partnerships, bankruptcy preparation, “business law,” wealth preservation and estate planning, banking and commercial transactions, “probate law,” “contract law” and “family law.”³⁴ The work to be performed was not to be, and was not, overseen by a licensed lawyer.³⁵ A & B paid Anthony and Associates a retainer of \$1,000.00 on July 27, 2013, but on February 24, 2014, A & B requested that Respondents refund the unused portion.³⁶ Respondents, however, have not returned any funds to A & B.³⁷

Legal Standards Governing the Unauthorized Practice of Law

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law within the State of Colorado,³⁸ restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.³⁹ To practice law in the State of Colorado, a person must have a law license issued by the Colorado Supreme Court, unless a specific exception applies.⁴⁰ Colorado

²⁹ Pet. ¶ 33.

³⁰ Pet. ¶ 34.

³¹ Pet. ¶¶ 35-36.

³² Pet. ¶¶ 37-38.

³³ Pet. ¶ 39.

³⁴ Pet. ¶ 40.

³⁵ Pet. ¶ 41.

³⁶ Pet. ¶¶ 42-43.

³⁷ Pet. ¶ 44.

³⁸ C.R.C.P. 228.

³⁹ *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.”).

⁴⁰ See C.R.C.P. 201-227.

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.”⁴¹

Here, Respondents engaged in the unauthorized practice of law by advertising to the public through their website that they could provide legal services.⁴² Respondents also held themselves out as a representative of A & B in a demand letter written to Ferrari. Further, when Anthony and Associates entered into a consultant/ paralegal contract with A & B, the company agreed to provide legal services including those involving “business law,” “contract law,” and “probate law” for a fee. Respondents also provided legal advice and counsel to A & B as evidenced by their cease and desist letters to Ms. Kemis and Ferrari.

While there is no evidence that Respondents ever filed a legal action on behalf of A & B, the evidence shows they acted as A & B’s legal representative and assisted in ostensibly protecting, enforcing, and attempting to defend A & B’s legal rights. Respondents drafted a letter to be sent by A & B to Ms. Kemis which purported to interpret the rights and duties of the parties in their memorandum of understanding. None of these purported legal services provided to A & B was completed under a licensed lawyer’s oversight. A layperson cannot exercise such legal discretion or judgment on another’s behalf without engaging in the practice of law.⁴³ Respondents’ actions were initiated without appropriate training and skill and deprived members of the public of effective representation, thus occasioning significant public harm.

Restitution, Fines, and Costs

In this case, the People request that Respondents be ordered to return A & B’s \$1,000.00 retainer, with interest accruing thereon from the date paid (July 13, 2013) until repaid. The PDJ finds this request appropriate and will recommend the requested restitution.

⁴¹ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006); see also C.R.C.P. 201.3(2)(a)-(f) (defining the practice of law).

⁴² See C.R.S. § 12-5-112 (2014) (“Any person who, without having a license from the supreme court of this state so to do, advertises, represents, or holds himself out in any manner as an attorney, attorney-at-law, or counselor-at-law . . . is guilty of contempt of the supreme court of this state”); *Binkley v. People*, 716 P.2d 1111, 1114 (Colo. 1986) (“Anyone advertising as a lawyer holds himself or herself out as an attorney, attorney-at-law, or counselor-at-law and, if not properly licensed, may be held in contempt of court for practicing law without a license.”); see also *Statewide Grievance Committee v. Zadora*, 772 A.2d 681, 684 (Conn. App. 2001) (“Advertising alone is sufficient to constitute the unauthorized practice of law if the advertisement is for activity that amounts to legal services.”).

⁴³ See *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010) (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”); *Denver Bar Ass’n v. Pub. Utils. Cmm’n*, 154 Colo. 273, 280, 391 P.2d 467, 471-72 (1964) (stating that the practice of law encompasses the preparation for others of “procedural papers requiring legal knowledge and technique”).


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 such incident. Here, the People request the assessment of the minimum fine because it is Respondents' first offense. The PDJ agrees and concludes that a fine of \$250.00 should be assessed against each Respondent.

The People attached to their motion for default a statement reflecting costs in the amount of \$176.00. The People are the prevailing party here, and the PDJ finds that their requested costs—an administrative fee and a fee for service of process—are reasonable.⁴⁴

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondents engaged in the unauthorized practice of law and **ENJOIN** them from the unauthorized practice of law. The PDJ further **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondents to jointly pay \$1,000.00 in **RESTITUTION** to A & B, requiring Smith to pay a **FINE** of \$250.00, requiring Anthony and Associates to pay a **FINE** of \$250.00, and requiring Respondents to jointly pay **COSTS** in the amount of \$176.00.

DATED THIS 13th DAY OF FEBRUARY, 2015.


WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



Copies to:

Kim E. Ikeler Via Email
Office of Attorney Regulation Counsel

Edward Smith Via First-Class Mail
and E. Anthony and Associates, LLC
Respondents
999 18th St.
Denver, CO 80202

Christopher T. Ryan Via Hand Delivery
Colorado Supreme Court

⁴⁴ See C.R.S. § 13-16-122 (setting forth an illustrative list of categories of “includable” costs in civil cases, including “[a]ny fees for service of process”).