

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW</p>	<p><b>COURT USE ONLY</b></p> <hr/> <p>Case Number: 01SA136</p>
<p>Petitioner: <b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p>Respondent: <b>SUZANNE SHELL</b></p>	
<p>Suzanne Shell 14053 Eastonville Rd. Elbert, CO 80106</p> <p>Phone number: 719-749-2971 Fax Number: 719-749-2972</p>	
<p><b>MOTION TO DISMISS</b></p>	

Comes now respondent, Suzanne Shell and respectfully requests the court to dismiss this action and in support thereof states:

1. The respondent will be citing law foreign to the state of Colorado, including U.S. 10<sup>th</sup> Circuit Court and United States Supreme Court decisions and the United States Constitution and Bill of Rights.
2. This court lacks subject matter jurisdiction.
  - a. This court is under the executive branch of government, not the judicial branch
  - b. This court is not empowered to hear constitutional issues
  - c. The respondent has asserted and asserts affirmative defenses based on constitutional issues which contravene the jurisdiction of this court
3. This court lacks personal jurisdiction over the respondent
  - a. Freedom of association includes the freedom not to associate. Respondent is not a member of the class that has voluntarily submitted to regulation represented by this action
  - b. Respondent has asserted and asserts affirmative defenses based on constitutional issues which contravene the jurisdiction of this court

- c. Therefore, respondent has not engaged in any activity subject to regulation by this court or the UPL Committee
4. Respondent requests the court to take judicial notice of C.R.S. 15-1-1300 through 1320. Assuming *arguendo* that respondent has engaged in the activities she has been accused of, 15-1-1313 specifically authorizes an agent to “***prosecute before a court. . .a claim, claim for relief, cause of action. . .and defend against an individual, a legal entity, or government. . .***” see attachment 1 for legislative intent
- a. **Prosecute** - 1. to commence and carry out a legal action. *Source: Black’s Law Dictionary 7<sup>th</sup> edition*
- b. **Defend** - 1. to deny, contest, or oppose (an allegation or claim) 2. to represent (someone) as an attorney. *Source: Black’s Law Dictionary 7<sup>th</sup> edition.*
5. The respondent is engaged in activities that are expressly empowered to her under Colorado statutes governing Statutory Powers of Attorney and, therefore, this court is barred from prosecuting her for that activity. Copies of relevant Statutory Powers of Attorney are attached.
6. The respondent is accused of activities that are the subject of this prosecution and all of which are also strictly protected under the First Amendment.  
*Freedom of association includes the right to associate for the purpose of activities protected by the First Amendment (speech, assembly, petition for redress of grievances, and exercise of religion). City of Dallas v. Staglin, 490 U.S. 19 (1989). Roberts v. US Jaycees, 104 S.Ct. 3244 (1984)*
7. Having demonstrated to this court through prior filings and through clearly established case law and statutes that the activities she has been accused of are strictly protected activities, the respondent asserts that this court and the UPL committee is being used for the improper purpose of retaliation against the respondent, and for the purpose of chilling her, and the members of her class their exercise of their First Amendment rights and for the purpose of obstructing future First Amendment speech and associations of the respondent and the members of her class. see *Morfin v. Albuquerque Public Schools, 906 F.2d 1434 (10<sup>th</sup> Cir. 1990)*  
*The possible scenarios involving retaliatory treatment of persons engaged in protected speech are too numerous to begin to list, and it is sufficient that the Supreme Court and the circuit precedent had clearly established that retaliation aimed at chilling fundamental rights was improper. Perry v. Sindermann, 408 U.S. 593 (1972)*
8. And to coercively punish her for relying on the statutes as the legal authority regarding the activity she is engaged in. This prosecution is no different than an officer of the law issuing a speeding ticket to a motorist for going 55 miles per hour in a 55 mile per hour speed zone.
9. This retaliation is well documented starting with the source of the Unauthorized Practice of Law complaint. The chain of the retaliation has expanded to include this court and the Unauthorized Practice of Law Committee.

10. Retaliation offends the Constitution because it threatens to inhibit, and in this instance actually has inhibited to a significant degree, the exercise of protected rights and, thus, is akin to the “unconstitutional condition.” This action was initiated with the intent to disadvantage citizens who are affected by Colorado Department of Human Services interventions and to deter public comment, not only by the respondent on this specific issue of public importance, but by any other person who wishes to associate with the respondent or who participates in this issue.

*An act in retaliation for the exercise of a constitutionally protected right is actionable even if the act, when taken for a different reason, would have been proper. This is especially true where First Amendment rights are involved. see Mt. Healthy v. Doyle, 429 U.S. 274 (1977)*

11. This governmental action has inflicted two years of injury, humiliation, and severe degradation of personal and professional reputation upon the respondent and has adversely affected her ministry, based solely on her lawful, statutory and constitutionally protected activities. The UPL Committee can prove no compelling need to undertake this action other than to retaliate against the respondent through the harshest legal mechanism available to it for her lawful and protected activities..

#### **REMEDIES**

12. Respondent respectfully requests the court to dismiss all complaints which fall under the purview of C.R.S. 15-1-1300 et. seq; specifically PETITION Claims II, III, IV, V, & VII and find that the respondent is not engaged in the unauthorized practice of law when she acts as an agent under the authority of a Statutory Power of Attorney.
13. Respondent respectfully requests the court to dismiss Claim VII as it is clear the respondent acted only as scrivener, which does not constitute the Unauthorized Practice of Law according to established law.
14. Respondent respectfully requests the court to dismiss Claim I as the respondent has never been contacted by, nor associated with any person who had a case identified by this case number in Fremont County.
15. Respondent respectfully requests this court to dismiss the Contempt Citation as being in punitive retaliation for her exercise of her Fourth Amendment right of refusing to consent to search as a condition of entering the location of the subject deposition.

Respectfully submitted:

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Suzanne Shell - respondent

## ATTACHMENT 1

### Colorado Revised Statutes

**Prefatory Note to Part 13** (indicating legislative intent of this Act) in relevant part:

The Statutory Power of Attorney Act, when adopted by a state, will give legislative sanction to a statutory form that can be used in whole or part instead of individually drafted forms or forms adapted from a form book. Use of the statutory form will be supported by the expressed authority of the state and have the statutory construction provided by sections 3 through 17 (numbered as sections 15-1-1304 through 15-1-13818 in C.R.S.). It is hoped that the form will become familiar and readily accepted by persons who see it. Acts of this kind have been adopted by several states including California, Illinois, Minnesota, and New York. This proposed Act is based in part on those examples.

Section 1 (numbered as section 15-1-1302 in C.R.S.) Is the form itself. It is a list of powers. The items relate to various separate classes of activities, except the last, which is inclusive. . .Special effort is made throughout the Act to make the language as informal as possible **without impairing its effectiveness.**

Section 3 (numbered as section 15-1-1304 in C.R.S.) Is the legislative construction of the authority that may be incidentally necessary for the exercise of a power vested in the form..

Sections 4 through 16 (numbered as sections 15-1-1305 through 15-1-1317 in C.R.S.) Are the legislative construction of the list of brief topics in the form. **Each section identifies actions that are permitted as appropriate to the particular grant of power.** The statements, without being exhaustive, attempt to be amply illustrative.

The Act as a whole **provides a practical method of granting powers of whatever scope may be appropriate** for people in a wide variety of circumstance.