



2012

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Recommended Citation

Tamburello, Hayley (2012) "Recent Developments: Att'y Griev. Comm'n v. Brisbon: A Suspended Attorney Engaged in the Unauthorized Practice of Law by Providing Legal Services Using the Title "Immigration Consultant," and a Continued Indefinite Suspension Was the Appropriate Sanction," *University of Baltimore Law Forum*: Vol. 42 : No. 2 , Article 7.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol42/iss2/7>

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RECENT DEVELOPMENT

ATT'Y GRIEV. COMM'N V. BRISBON

By: Hayley Tamburello

**A SUSPENDED ATTORNEY ENGAGED IN THE
UNAUTHORIZED PRACTICE OF LAW BY PROVIDING
LEGAL SERVICES USING THE TITLE “IMMIGRATION
CONSULTANT,” AND A CONTINUED INDEFINITE
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Please cite this Recent Development as *Att’y Griev. Comm’n v. Brisbon*, 42 U. Balt. L.F. 239 (2012).

RECENT DEVELOPMENT

ATT'Y GRIEV. COMM'N V. BRISBON: A SUSPENDED ATTORNEY ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW BY PROVIDING LEGAL SERVICES USING THE TITLE "IMMIGRATION CONSULTANT," AND A CONTINUED INDEFINITE SUSPENSION WAS THE APPROPRIATE SANCTION.

By: Hayley Tamburello

The Court of Appeals of Maryland held that an attorney acting as an “immigration consultant” engaged in the unauthorized practice of law, in violation of the attorney’s indefinite suspension. *Att’y Griev. Comm’n v. Brisbon*, 422 Md. 625, 31 A.3d 110 (2011). The court found that the attorney’s role exceeded providing non-legal advice, guidance, information, and services. *Id.* at 643-44, 31 A.3d at 121. Additionally, the court concluded that under the circumstances, continuing the attorney’s indefinite suspension was the appropriate sanction. *Id.* at 646, 31 A.3d at 123.

On March 17, 2005, the Maryland Bar indefinitely suspended attorney Brenda Brisbon (“Brisbon”). Brisbon, without admission to another state’s bar and while suspended, operated the business “Brenda C. Brisbon, P.A., Immigration Consultant” and retained Mr. and Mrs. Nkrumah as clients. The Nkrumahs, unaware of the suspension, paid Brisbon for her legal advice, submission of immigration forms, and promise to attend their interview with the United States Citizenship and Immigration Services (“USCIS”). Brisbon prepared five different immigration forms on the Nkrumahs’ behalf but did not sign them. After submitting the forms, USCIS communicated to Brisbon that the I-765 employment authorization form was outdated. Brisbon failed to appear at the interview.

On August 23, 2010, the Attorney Grievance Commission of Maryland filed a Petition for Disciplinary or Remedial Measures with the Court of Appeals of Maryland against Brisbon. The court ordered that an Eighth Circuit judge hear the charges. After a hearing, the judge concluded that Brisbon engaged in the unauthorized practice of law by acting as an “immigration consultant” and violated the Maryland Lawyers’ Rules of Professional Conduct. Brisbon filed exceptions to the ruling with the Court of Appeals of Maryland. She argued that the judge’s findings and conclusions were erroneous

because he failed to consider her background, use of computer program to complete the forms, and “immigration consultant” office signs. She also argued that the judge did not use the clear and convincing evidence standard.

The Court of Appeals of Maryland, having original and complete jurisdiction over attorney disciplinary matters, gave deference to the hearing judge, but reviewed all conclusions of law *de novo*. *Brisbon*, 422 Md. at 640, 31 A.3d at 119 (citing *Att’y Griev. Comm’n v. Ugwuonye*, 405 Md. 351, 952 A.2d 226 (2008)). The crucial determination was whether Brisbon’s conduct fell within the definition of the term “unauthorized practice of law.” *Brisbon*, 422 Md. at 641, 31 A.3d at 119 (citing *Att’y Griev. Comm’n v. Hallmon*, 313 Md. 390, 681 A.2d 510 (1996)). The court specifically examined whether Brisbon used legal knowledge, skill, principles, and precedent. *Brisbon*, 422 Md. at 641, 31 A.3d at 120 (quoting *In re Discipio*, 645 N.E.2d 906 (Ill. 1994)). Comparatively, under the Maryland Immigration Consultant Act (“MICA”), an immigration consultant would only provide non-legal advice, guidance, information, and services. *Brisbon*, 422 Md. at 642-43, 31 A.3d at 120-21. The court reviewed the record and recounted three specific findings of the hearing judge pertaining to Brisbon’s conduct with the Nkrumahs: form preparation, USCIS communication, and the promise to appear at the interview. *Id.* at 638-40, 31 A.3d at 118-19.

First, the court examined federal regulations and found that preparing or filing briefs, documents, applications, or petitions fit the description of practicing immigration law. *Brisbon*, 422 Md. at 639, 31 A.3d at 118 (citing 8 C.F.R. § 1.1(i) (2011)). According to the hearing judge, Brisbon’s choice of forms and the way in which she prepared them required legal skills because those without such training might not know which forms to select. *Brisbon*, 422 Md. at 639, 31 A.3d at 118. The I-864A contract between sponsor and household member concerned the court because it was a legally binding contract that advised consulting an attorney. *Id.* at 639, 31 A.3d at 118-19. This form required that the preparer have a greater understanding of the law than an ordinary person. *Id.* at 640, 31 A.3d at 119 (citing *Lukas v. Bar Ass’n of Mont. Cnty.*, 35 Md. App. 442, 371 A.2d 669 (1977)).

Second, the court examined Brisbon’s USCIS communication, including her cover letters identifying her as an immigration consultant. *Brisbon*, 422 Md. at 635, 31 A.3d at 116. The court found that Brisbon communicated with USCIS regarding the outdated form. *Id.* at 640, 31 A.3d at 119. This violated federal regulations, which

only permit an attorney or accredited representative to communicate with USCIS on behalf of another individual. *Id.* at 636, 31 A.3d at 117 (citing 8 C.F.R. § 103.2(a)(3)). Brisbon was not an accredited representative as she was not a member of an organization recognized by the Board of Immigration Appeals. *Brisbon*, 422 Md. at 636-37, 31 A.3d at 117.

Third, the court scrutinized Brisbon’s agreement to appear at the interview. *Brisbon*, 422 Md. at 637, 31 A.3d at 117. Because Brisbon was not a practicing attorney or an authorized representative, she was not qualified to attend. *Id.* Although Brisbon claimed the term “authorized representative” was a gray area of the law, the court found her experience made her lack of knowledge claim not credible. *Id.* at 637, 31 A.3d at 117. Even though Brisbon did not appear at the interview, the court viewed her agreement to appear as engaging in the practice of law. *Id.* at 639, 31 A.3d at 118. In analyzing each of Brisbon’s tasks, it was clear that she provided more than non-legal services, in violation of MICA. *Id.* at 642, 31 A.3d at 120.

The court also affirmed the hearing judge’s conclusion that Brisbon’s misrepresentations violated her suspension. *Brisbon*, 422 Md. at 630, 31 A.3d at 113. Brisbon’s business used an inconsistent title, as paperwork contained the same heading, phone number, and facsimile number as her former law practice. *Id.* at 632-35, 31 A.3d at 114-16. This conflicted with the “immigration consultant” cover sheet sent to USCIS. *Id.* at 635, 31 A.3d at 116. The court was suspicious of her lack of signatures, and determined that the omissions were intentional. *Id.* at 634, 31 A.3d at 116. Brisbon’s deceitful conduct and failure to disclose her suspension violated the Maryland Lawyers’ Rules of Professional Conduct. *Id.* at 630, 31 A.3d at 113. Accordingly, the Court of Appeals of Maryland affirmed the trial court’s finding by clear and convincing evidence that Brisbon engaged in the unauthorized practice of law. *Id.*

To determine the appropriate sanction, the court noted that the greatest consideration was protecting the public and the sanction should match the nature of the misconduct. *Brisbon*, 422 Md. at 644-45, 31 A.3d at 122 (citing *Att’y Griev. Comm’n v. Reinhardt*, 391 Md. 209, 223, 892 A.2d 533, 541 (2006)). The court highlighted three considerations, which are that each case rests on its own merits, the purpose of sanctions are to protect clients rather than punish attorneys, and the sanctions need to be in line with the nature of the misconduct and the attorney’s intent. *Brisbon*, 422 Md. at 644-45, 31 A.3d at 122. The court similarly considered the American Bar Association’s Standards for Imposing Lawyer Sanctions, which look at the nature of

the offense, the attorney's mental state, extent of the injury, and any aggravating and mitigating circumstances. *Id.* at 645, 31 A.3d at 112 (citing *ABA Standards, Standard 3.0*, 17 LAWYERS' MANUAL ON PROFESSIONAL CONDUCT (2003)). In light of these considerations, the court noted that Brisbon was ill, wanted to move home to Africa, and had no desire to practice law again. *Brisbon*, 422 Md. at 646, 31 A.3d at 122. Under these circumstances, the court held that continuing Brisbon's indefinite suspension was sufficient to protect the public. *Id.* at 646, 31 A.3d at 123.

Brisbon cautions Maryland attorneys that the practice of law stretches beyond trial appearances. Using legal knowledge to prepare forms that require more than data input, and promising to attend USCIS interviews constitutes the practice of law. This decision serves as a warning to attorneys with paralegals or other non-lawyer employees that those individuals cannot complete those tasks without attorney supervision. The ruling also affects former attorneys because "turning off" one's legal knowledge may prove incredibly difficult, and they should proceed with caution.