

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 26, 2017 CASE NUMBER: 2016SA178
Original Proceeding in Unauthorized Practice of Law, 15UPL032	
Petitioner: The People of the State of Colorado, v. Respondents: Denise Osborn and Kilimanjaro Services Inc., a Colorado corporation.	Supreme Court Case No: 2016SA178
ORDER OF INJUNCTION	

Upon consideration of the Report of Hearing Master under C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that Respondents, DENISE OSBORN and KILIMANJARO SERVICES INCORPORATED 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 are assessed costs in the amount of \$224.00. 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 Restitution be imposed in the amount of \$650.00.

IT IS FURTHER ORDERED that Respondents jointly and severally pay a fine in the amount of \$250.00.

BY THE COURT, JULY 26, 2017.

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	
<hr/> Petitioner: THE PEOPLE OF THE STATE OF COLORADO Respondents: DENISE OSBORN and KILIMANJARO SERVICES, INC., a Colorado corporation	<hr/> Case Number: 16SA178 (consolidated with 16SA248)
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

The Office of Attorney Regulation Counsel (“the People”) alleges that Denise Osborn (“Respondent Osborn”) and Kilimanjaro Services, Inc. (collectively “Respondents”) engaged in the unauthorized practice of law by selecting immigration forms for several customers. The People also allege that Respondents offered a customer legal advice about her visa appointment in Mexico and advised a second customer about how to respond to government correspondence. William R. Lucero, the Presiding Disciplinary Judge (“the PDJ”), finds that although the People have not proved by a preponderance of the evidence that Respondents selected the forms in question, the People did prove that Respondent Osborn offered one customer legal advice. 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 in case number 16SA178 with the Colorado Supreme Court on May 27, 2016, alleging that Respondents engaged in the unauthorized practice of law in two matters. Respondents responded on June 14, 2016, and the Colorado Supreme Court referred that matter to the PDJ on June 21, 2016. The PDJ held a scheduling conference on July 7, 2016, and set the hearing for October 12, 2016. That hearing was continued because the People filed an additional case against Respondents.

In that matter, case number 16SA248, the People filed a petition against Respondents on September 12, 2016, alleging that they engaged in the unauthorized practice of law in a separate instance. Respondents responded to that petition on September 26, 2016. The PDJ consolidated case number 16SA178 with case number 16SA248 on October 5, 2016, and a second scheduling conference was held on January 27, 2017, where Respondents were

represented by attorney Antonio Lucero. At the conference, the PDJ set the hearing for April 27, 2017.

At the hearing, Ikeler appeared for the People, and Lucero appeared on behalf of Respondents. The PDJ heard testimony from Gavina Arellano, Jose Luis Franco Carrillo, and Maria Soltero—all of whom testified by telephone with the help of a Spanish language translator—as well as Leslie Berry Siqueiros, and Alvaro Simental. Respondent Osborn also testified as did Maria Pittman. The PDJ admitted the People’s exhibits 1, 4 (page 0009 only), 7, 10, and 12, and Respondents’ exhibits A-E, G-L, P, and R-U. After the close of the People’s evidence, Respondents moved for a directed verdict, which the PDJ denied.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

Respondent Osborn is not a licensed lawyer in any state, but she is a licensed notary public. Respondent Osborn operates and is the principal owner of Kilimanjaro Services in Denver. The business opened in 1995. Respondents advertise via a storefront sign in English that reads: Public Notary, Interpreter, International, Faxes.¹ Through her company, Respondent Osborn testified, she assists customers with navigating the U.S. Citizenship and Immigration Services (“USCIS”) website, the basic preparation of immigration forms, and translating letters, forms, and other documents from Spanish to English. Occasionally, her mother, Maria Pittman, who is retired, assists her in the office with administrative tasks such as answering the phone, although she is not employed by Kilimanjaro.

According to Respondent Osborn, before completing any services, she requires a customer to sign a contract that she prepared with the assistance of an attorney.² That contract states in part that Respondents are not attorneys, that they cannot provide legal advice, and that the only service they provide is filling out documents, papers, or applications “according to the information provided” by the customers.³ A sign that adorns the wall of her office reads in English and Spanish: “I am not an attorney licensed to practice law in the State of Colorado and I may not give legal advice or accept fees for legal advice’ Notary Public \$5.00.”⁴ Respondent Osborn said that her fees are determined by the type of form her customers want filled out or translated.

Respondent Osborn testified that she does not represent customers in a legal capacity, appear at legal hearings, or use any discretion to select or prepare immigration forms. Rather, the U.S. government provides directions as to what forms her customers should use, and she follows those instructions, she said. She explained that when a customer needs help with immigration forms she looks at the USCIS website, which provides

¹ Ex. B.

² See Exs. C-D.

³ Ex. C.

⁴ Ex. A.

directions and prompts to guide her and her customers through the forms and processes they need to complete.⁵ She averred that she does nothing more than follow these instructions while her customers confirm her actions. She further said that the USCIS website has a prominently featured help button that assists people with form selection and instructions, which she commonly uses to download the correct form.⁶ She testified that she also relies on USCIS pamphlets for guidance. For example, she frequently refers to a pamphlet titled, “I am a U.S. Citizen . . . How do I . . . Help My Relative Become a U.S. Permanent Resident?” This pamphlet, like the website, she said, contains detailed instructions for a U.S. citizen to petition for a relative, including listing the specific forms that need to be filed with USCIS and other pertinent instructions.⁷

Generally, when a customer comes to her for assistance, Respondent Osborn reads or translates the information found on the USCIS website or in other government literature in response to the customer’s questions. If the customer needs help filling out a specific form, she said, she retrieves the form from the USCIS website, confirms the form with the customer, reads or translates the form, and then fills in the customer’s information. Once a form is complete, Respondent Osborn testified, she then directs the customer to purchase a money order at the nearby King Soopers for the filing fee and provides the customer with an envelope addressed to USCIS. The filing fees are listed on the USCIS website, she said.

On May 17, 2002, Respondents entered into an agreement with the Colorado Supreme Court’s Unauthorized Practice of Law Committee.⁸ In that agreement, Respondents acknowledged that the preparation of legal documents for customers, other than acting solely as a scrivener or a foreign language translator, constitutes the unauthorized practice of law.⁹ They also agreed to refrain from any further actions constituting the unauthorized practice of law.¹⁰

Arellano Matter

Gavina Arellano entered the United States from Mexico in 1999. She resided with her son in Aurora, Colorado, until she left the country in 2015. She currently lives in Mexico. Arellano has a limited education and does not read or speak English. Nor does she know how to use a computer to access the internet. Her son, Alvaro Simental, is a naturalized U.S. citizen and lives in Colorado. He owns a landscaping business. He testified in English at the hearing and said that he can read English, as well.

Arellano testified that in 2013 she wanted to adjust her status to become a permanent resident, but she “knew very little” about this process and certainly did not

⁵ See Exs. K-L.

⁶ See Ex. 7.

⁷ See Ex. L. This pamphlet contains a box titled “Key Information.” That box lists forms I-130, I-864, and I-485 as relevant to a relative’s petition.

⁸ Ex. 1.

⁹ Ex. 1 at 0001.

¹⁰ Ex. 1 at 0002.

know what forms she needed to submit to USCIS. Simental suggested to his mother that they meet with Respondent Osborn because she had previously helped him fill out the forms to adjust his status. Arellano said that she and her son counted on Respondent Osborn to fill out USCIS forms correctly. Arellano further testified that she generally trusted people who worked in an office and never believed that she would have a bad experience.

Simental thought that Respondent Osborn was professional and knowledgeable about immigration, and he did not doubt her abilities or knowledge. Simental stated that even though he had been through a similar petitioning process himself in the past, he did not know what forms he needed to submit to sponsor his mother. He thus specifically sought Respondent Osborn's help because she knew more than he did, he did not want to "mess anything" up, and he was "not great" with computers. As he stated, "you know something but you don't know anything." Although both Arellano and Simental thought Respondent Osborn knew how to help them with immigration matters and thought of her as an expert, there is no evidence that she held herself out as such.

According to Arellano, she and her son met with Respondent Osborn and her mother at Respondents' office in January 2013, and Arellano asked Respondent Osborn to submit for her an application for permanent residency. But she did not know the name of the relevant form, nor did she bring a form with her to the meeting. Arellano testified that she watched Respondent Osborn navigate a webpage to find the petition, which Respondent Osborn then filled out on her computer by inputting her and Simental's answers. When the petition was complete, Arellano remembered signing the form and then mailing it to USCIS.¹¹

Likewise, Simental testified that he did not direct Respondent Osborn to use a specific form from the USCIS website, nor did he bring any preprinted immigration form with him to the meeting, but he did ask her to fill out the petition for his mother's permanent residency. He also said that he brought some of his mother's relevant personal documents, such as her birth certificate, marriage license, and driver's license. Simental testified that it was Respondent Osborn who found the I-130 petition online. He also averred that Respondent Osborn reviewed the documents he brought to the meeting and explained to him the requirements of the petition.

Respondent Osborn echoed Simental's testimony that at this first meeting, he asked her to adjust his mother's status and brought some of his mother's personal documents. According to Respondent Osborn, however, Simental had a general idea of what needed to be done to adjust his mother's status, and she remembered him referring to the I-130 petition by name. She testified that she merely did what Simental and Arellano wanted her to do: navigate the website to pull up the correct form and help them fill it out. Respondent Osborn maintained that she knew to retrieve the I-130 petition from the USCIS website, which told her what form to use when a U.S. citizen wanted to adjust a family member's status. She also stated that she looked at the USCIS pamphlets that she had in her office, which contained similar instructions on how to file a petition for family member, listed the

¹¹ See Ex. T.

financial qualifications for the I-864 affidavit of support, and explained the purpose of the affidavit of support.¹²

Respondent Osborn said that she confirmed with Simental every step she took on the website, including whether he wanted to use the I-130 form, which he agreed to use. Respondent Osborn testified that she then read him the form, filled in the blanks, and clicked the correct answer boxes based on his and Arellano's responses. When she was done, Respondent Osborn printed the I-130 petition for them to review, told Simental to get a money order from King Soopers for the filing fee in the amount listed on the USCIS website, and gave him an envelope to mail the documents to USCIS.

In December 2013, Arellano received a letter from USCIS, indicating that her application had been "approved."¹³ Simental testified that he read the letter and understood it as "much as he could" but did not truly comprehend what the letter meant. He and his mother decided to again meet with Respondent Osborn so that she could help them with the next steps. Although the letter indicates that his mother was not eligible to adjust her status, Simental does not recall asking Respondent Osborn what that meant; he also said that he did not know his mother was ineligible to adjust her status and that Respondent Osborn never advised him that he should be worried in any way about the contents of this letter. Respondent Osborn testified that Simental asked her to read this letter and to confirm what it said, and she did that. She said that she told him it would take about thirty days for them to receive an answer from the U.S. visa center because that is what the letter stated.¹⁴

Simental testified that he and his mother had a third meeting with Respondent Osborn during which he asked for help filing a financial affidavit of support. He said that Respondent Osborn retrieved the I-864 form from the USCIS website, prepared it based on his answers, and printed the final form for his review and signature.¹⁵ He attested that he also spoke to Respondent Osborn at that meeting about the specific supporting financial documents he would need. Likewise, Arellano recalled Respondent Osborn helping her son to fill out the affidavit and giving him an envelope to mail the completed form. She said that Respondent Osborn "knew how to do everything." Respondent Osborn testified that she met with Simental after he received a letter asking for additional financial information. She stated that she downloaded the I-864 affidavit form from the USCIS website because the letter listed that form; it also contained a checklist of supporting documents.¹⁶ According to Respondent Osborn, she merely followed the instructions in Simental's letter and in other USCIS literature and filled in the I-864 affidavit with Simental's answers. He then confirmed the information and mailed the affidavit to USCIS, Respondent Osborn recalled.

¹² See Exs. K-L (listing forms I-130, I-485, I-864, I-864A, and I-865).

¹³ Ex. S.

¹⁴ Ex. S.

¹⁵ See Ex. U.

¹⁶ See Ex. K.

In September 2015, Arellano received another letter from USCIS, this time informing her that she needed to attend a visa interview at the U.S. Embassy in Juarez, Mexico.¹⁷ She testified that she and her son met with Respondent Osborn on a fourth occasion after receiving this letter. Respondent Osborn's mother, Pittman, was at this meeting. Arellano stated that at the meeting, Respondent Osborn helped her prepare the form and a packet of documents that she needed to take with her to the appointment in Juarez. She said also that she told Respondent Osborn that she did not want to go to Juarez because her youngest daughter was in therapy in the United States, but that Respondent Osborn told her that she had to go to the meeting. According to Arellano, Respondent Osborn told her that there was a "fifty-fifty" chance she would not be permitted to return to the United States. Arellano did not recall Respondent Osborn suggesting that she speak with a lawyer before traveling to Juarez.

Simental testified that during this meeting, Respondent Osborn told him that his mother could go down to Mexico for her appointment, wait two weeks, and come back, much "like a vacation." He remembered that Respondent Osborn told him only that there was a "slight" chance that his mother might not return to the United States. But he said Respondent Osborn was confident that nothing would go wrong and that her appointment in Juarez was "business as usual." Based on those assurances, Simental testified, he and his mother were not worried about her appointment in Mexico. He said that he "figured two weeks in Mexico would not be that bad," as he understood from Respondent Osborn that the visa appointment was relatively "low-risk." He was adamant that Respondent Osborn never told him or his mother that they should speak with an attorney before his mother left the country. Although he does remember her giving him attorney Jeff Joseph's business card, he said that she only told him to retain an attorney if there was a problem in Mexico. Simental testified that he trusted Respondent Osborn's advice because she seemed knowledgeable and had successfully helped him in the past. He maintained that he had no understanding that his mother might be denied reentry into the United States. If he had, he said, he never would have encouraged her to travel to Mexico for the appointment.

Respondent Osborn has a somewhat different recollection of this final meeting. According to her, Simental and Arellano asked her questions about the process. She recalled a "slight" conversation with them about the risk that his mother might remain in Mexico but maintains that she immediately told him to hire a lawyer and gave him Joseph's business card. She averred that she did not answer any of Simental's specific questions about the process, but rather read him the appointment letter and helped him fill out the forms that his mother was required to bring. As Respondent Osborn described it, she never told Arellano that she had a fifty-fifty chance of reentering the United States if she attended the interview. Respondent Osborn acknowledged that had she done so, her advice would have been grossly incompetent. She also testified that she did not advise Simental that his mother would return to the United States within two weeks, but rather that it could take up to two weeks for Arellano to retrieve her medical information from Mexico. Pittman,

¹⁷ Ex. R.

meanwhile, testified that Arellano told her that a lawyer was “too expensive” and that she was “going to take a chance” and travel to Mexico. Pittman said that she saw Respondent Osborn hand Simental a business card for an attorney.

Considering these differing accounts of the final meeting, the PDJ finds by a preponderance of the evidence that Respondent Osborn likely offered advice to Simental and Arellano about how long Arellano’s visa interview might take, weighed the odds of when she might return, and opined on the overall risk of Arellano leaving the United States. The PDJ finds Simental credible when he stated that he never would have allowed his mother to attend the interview in Mexico had he been accurately advised of the risks and only did so because of Respondent Osborn’s assurances. Likewise, the PDJ credits Arellano’s testimony about Respondent Osborn telling her that she had a fifty-fifty chance of returning to the United States.

Ultimately, when Arellano visited the U.S. Embassy in Juarez, she learned that she could not reenter the United States for ten years. Simental testified that he has since hired an attorney, but his mother remains in Mexico. Her presence there has affected his entire family, he said. He is responsible for raising his younger siblings. He visits his mother three times a year and blames himself for her inability to return to the United States. He knows now that he should have contacted an attorney to assist his mother from the start. Simental stated that he paid Respondents between \$400.00 and \$1,000.00 for the services described above and that Respondent Osborn had not refunded any of their fees.

Siqueiros Matter

Leslie Berry Siqueiros, a receptionist at a dental office, testified that in 2014 she decided to file a petition for her mother so that her mother could legally immigrate from Mexico to the United States. She said that she knew she needed to file a petition for her mother but did not know how to do so because she was unfamiliar with USCIS and how to access immigration forms online. An acquaintance of hers recommended that Siqueiros contact Respondents for assistance.

Siqueiros testified that she called Respondents’ office and spoke with Pittman, who told her she would need to file a petition for her mother and explained to her what paperwork she would need. Siqueiros stated that she brought those documents with her to a first meeting with Respondent Osborn. Siqueiros said that she knew Respondent Osborn was not a lawyer and that Respondent did not offer her any legal advice. She signed Respondent Osborn’s contract, though she did not remember doing so.¹⁸

According to Siqueiros, at the meeting she asked Respondent Osborn to fill out the petition for her. Siqueiros stated that she did not tell Respondent Osborn which specific form to use; rather, Respondent Osborn accessed the I-130 petition online. Respondent Osborn then filled in the form on her computer by asking Siqueiros questions. After

¹⁸ See Ex. D.

Respondent Osborn completed the petition, Siqueiros said, Respondent Osborn printed the petition so that Siqueiros could verify her answers before sending it to USCIS. Siqueiros described Respondent Osborn as knowledgeable about immigration and said that she could answer all of her questions about her mother's petition, such as how long the process would take. She also said Respondent Osborn knew a lot about which USCIS forms had to be filled out for each step.

Respondent Osborn stated that Siqueiros was very up-front about what she wanted to accomplish. According to Respondent Osborn, Siqueiros asked her to fill out a petition for her mother, so Respondent Osborn told her what form the website said to use, and while Siqueiros sat next to her at the computer, Respondent Osborn said she filled in the I-130 petition with Siqueiros's information. When Respondent Osborn completed the form, she said that she handed Siqueiros the form for her review and signature. Respondent Osborn also stated that she only tells her customers how long a process might take if that information is listed on the USCIS website.

After mailing the petition to USCIS, Siqueiros received a letter informing her that her mother's petition was accepted but that she needed to make an additional online payment. Siqueiros said that she again spoke with Pittman over the phone, who told her how to submit the payment online through the USCIS website. Respondent Osborn remembers telling Siqueiros where to find her invoice number so that she could make the payment online, which she did.

Siqueiros then received another letter from USCIS instructing her to submit a financial affidavit of support along with proof of income. She recalls the letter listing the specific affidavit form to fill out. Siqueiros testified that she then contacted Respondent Osborn, who told her what supporting documents to gather, such as her income tax forms. She also stated that she met with Respondent Osborn at her office, where Respondent Osborn looked at her letter, "pulled up" the form referenced in the letter on the USCIS website, and filled out the affidavit with the answers that Siqueiros provided to her. According to Siqueiros, Respondent Osborn further assisted her by placing the required financial documents in the correct order to send to USCIS. Siqueiros stated that she then mailed the documents to USCIS. After this, Siqueiros's mother became gravely ill, and Siqueiros stopped pursuing the project.

Siqueiros believes that she paid Respondents a total of \$600.00 or \$700.00 for the services described above. Respondent Osborn refunded Siqueiros's fees.¹⁹

Soltero Matter

In January 2014, married couple Maria Soltero and Jose Luis Franco Carrillo ("the Solteros") needed to renew their green cards, also known as permanent resident cards. The Solteros both testified that they did not know how to do this or which forms to use. Neither

¹⁹ See Exs. G-H. Respondent Osborn testified that the People instructed her to make this refund, so she did.

of the Solteros can read or speak English, nor are they computer savvy. According to Mr. Soltero, he contacted Respondents because he had seen an advertisement indicating that Respondents helped with immigration forms. Mr. Soltero knew Respondent Osborn was not an attorney but rather a notary public. He testified that she offered him no legal advice.

Mr. Soltero testified that he and his wife met with Respondent Osborn at Respondents' office, where they asked for help renewing their green cards. He recalled Respondent Osborn telling him that she could help him fill out the correct form, retrieving a form on the USCIS website, and asking the couple various questions from the form, such as their full names and where they resided. After Respondent Osborn filled out an I-90 form for each of them, the Solteros remember signing them and placing them along with a money order in an envelope that Respondent Osborn gave them. They then mailed the documents to USCIS.

Respondent Osborn testified that the Solteros specifically stated they needed to renew their green cards. Although Respondent Osborn testified that Mr. Soltero brought to the meeting an USCIS pamphlet with step-by-step instructions about how to renew a green card using an I-90 form,²⁰ Mr. Soltero had no recollection of bringing this literature with him.²¹ According to Respondent Osborn, that pamphlet contains clear instructions for renewing green cards, including filing out an I-90 form. She said that once she read the pamphlet, she asked the Solteros if they wanted to use the I-90 form to renew their green cards, they said yes, and she then pulled up the form on the USCIS website. That website, she said, also listed the exact steps to renew a green card, including submitting an I-90 form. She testified that she merely followed the government's instructions in the pamphlet and on the website, and did not choose the I-90 form on her own. She then translated the form and filled it in with the Solteros' answers. When she was done, she said that she handed them the forms along with an envelope for mailing to the USCIS.

The Solteros paid Respondents \$60.00 for those services. Although the Solteros' green cards were successfully renewed, Respondents refunded the Solteros their \$60.00.²²

Legal Analysis

The Colorado Supreme Court, which exercises exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law in Colorado,²³ restricts the practice of law to protect members of the public from receiving incompetent legal advice

²⁰ See Ex. J. Respondent testified that she kept the Solteros' pamphlet in her office files because she had never seen it before.

²¹ Ex. J.

²² Ex. I. Respondent Osborn testified that the People once again instructed her to make this refund, so she did.

²³ C.R.C.P. 228.

from unqualified individuals.²⁴ To practice law in Colorado, a person must have a law license issued by the Colorado Supreme Court unless a specific exception applies.²⁵

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 counseling, advising and assisting that person in connection with these rights and duties” engages in the practice of law.²⁶ Phrased somewhat more expansively, the practice of law involves the exercise of professional judgment, calling upon “legal knowledge, skill, and ability beyond [that] possessed by a layman.”²⁷ Although acting as a mere scrivener when assisting others to complete forms does not constitute the unauthorized practice of law, exercising legal discretion to select forms for another person’s use amounts to the unauthorized practice of law.²⁸

Here, the People charge that Respondents engaged in the unauthorized practice of law by selecting immigration forms from the USCIS website for Arellano, Siquieros, and the Solteros. Although the People acknowledge that such forms can be easily located on the USCIS website, they allege that Respondent Osborn proffered legal advice by going to the “Forms” section of the website and choosing the appropriate form for each customer. Even where a customer is clear about his or her desired action but does not explicitly direct the scrivener to use a particular form by name, the People maintain, the scrivener engages in the unauthorized practice of law in choosing the form. They further claim that Respondent Osborn offered legal advice to Simental and Arellano about the timeframe and risks concerning Arellano’s appointment in Mexico and that she advised Siquieros what documents she would need to support the I-130 and I-864 forms.

Respondent Osborn, for her part, simply avows that she used no discretion in choosing certain forms for these customers. Rather, she contends that she did exactly what her customers asked her to do and simply retrieved the relevant forms by following the

²⁴ *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.”).

²⁵ See C.R.C.P. 201-224.

²⁶ *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

²⁷ See *In re Swisher*, 179 P.3d 412, 417 (Kan. 2008); see also *Ohio State Bar Ass’n v. Burdzinski*, 858 N.E.2d 372, 377 (Ohio 2006) (observing that there is no unauthorized practice of law “when the activities of the nonlawyer are confined to providing advice and services that do not require legal analysis, legal conclusions, or legal training”); *Perkins v. CTX Mortg. Co.*, 969 P.2d 93, 98 (Wash. 1999) (“we have prohibited only those activities that involved the lay exercise of legal discretion because of the potential for public harm”).

²⁸ *Shell*, 148 P.3d at 171; *Grimes*, 654 P.2d at 823 (deeming the selection of case-specific legal documents the practice of law); *Colorado Bar Ass’n v. Miles*, 192 Colo. 294, 296, 557 P.2d 1202, 1204 (1976) (enjoining a respondent from the preparation of pleadings and written instruments other than in the manner performed by a scrivener or public stenographer); see also *Franklin v. Chavis*, 640 S.E.2d 873, 876 (S.C. 2007) (holding that even the preparation of standard forms may constitute the practice of law if one acts as more than a mere scrivener, meaning someone who does nothing more than record verbatim what another says).

instructions on the USCIS website, in other government literature, and in the letters her customers received from USCIS. In addition, she avers that the USCIS website and USCIS correspondence contained checklists of supporting documents, which she simply followed. Thus, she claims she did not offer Siquieros any legal advice about what documents she should send to USCIS. Finally, Respondent Osborn argues that she did not offer any legal advice to Simental or Arellano about the visa appointment and claims that she immediately told them to seek assistance from an attorney once they began asking her questions about the consular process.

The PDJ rejects the People's contention that Respondent engaged in the unauthorized practice of law in using a certain form on the USCIS website merely because her customers never specifically directed her to use a specific form. Respondent testified without contradiction that her customers knew from the outset exactly what they wanted to do in their immigration matters: Simental and Siquieros, both U.S. citizens, told her that they wanted to file petitions for their mothers, and the Solteros informed her that they needed to renew their green cards. Arellano and the Solteros did not speak English, know how to use a computer, or access the internet, and they needed Respondent Osborn's assistance to get the form they needed to complete their tasks.

Taking directives from her customers, Respondent Osborn navigated the USCIS website and retrieved the appropriate forms. She then confirmed with her customers that she should use the form, read and translated the form, and wrote down the information that her customers provided to complete the initial forms. When Simental and Siquieros came to Respondent Osborn on separate occasions for assistance with the affidavit of financial support, Respondent Osborn downloaded the I-864 form from the USCIS website because that form number, along with a checklist of supporting documents, was referenced in USCIS correspondence, in USCIS literature, and on the website. Respondent Osborn had these resources readily available in her office, and she referenced them during the relevant events. Additionally, no evidence was presented that Respondent Osborn ran afoul of the unauthorized practice of law rules by advising her customers what form to use, how to answer any of the questions on the forms, or how to respond to USCIS correspondence. Nor does the evidence suggest that her customers had more than one choice of form in their given situations.

Accordingly, the PDJ concludes that Respondent Osborn simply guided her customers through the website to find the forms they wanted to fill out and retrieved the forms for them. Indeed, the PDJ received no evidence to suggest that Respondent Osborn needed any legal judgment, knowledge, expertise, or skill to find the forms on the USCIS website based on her customers' instructions about what they wanted to do. Based on the testimony and evidence admitted, the PDJ understands that the USCIS website and other literature provide step-by-step instructions for people to gather the forms they need by means available to anyone who connects to the internet, both laypeople and attorneys alike. In short, the People did not show that Respondent Osborn exercised any discretion on her customers' behalves. The PDJ recognizes that this case presents a close call, however, and

makes this determination strictly on the facts here namely, the facts showing no use of legal discretion. Under these circumstances, the PDJ determines that Respondent Osborn's actions did not go beyond basic preparation or translation of forms, an activity squarely within the ken of ordinary laypeople.

The PDJ does agree with the People, however, as to their second contention. A core element of practicing law is giving legal advice, and the PDJ concludes that Respondent Osborn offered such advice to Simental and Arellano. As described above, the PDJ credits Simental's testimony that he never would have permitted his mother to travel to Mexico had he been fully aware of the risks involved. He was not concerned, however, because Respondent Osborn advised him that his mother's departure from the United States presented only a "slight" risk that she might be denied reentry. In fact, she suggested to Simental that the appointment was "business as usual." Even though Respondent Osborn told Simental to speak with an attorney at their fourth meeting, she still opined that Arellano had to travel to Mexico to attend the appointment, and she weighed the risks associated with this appointment. As soon as Simental and Arellano began asking questions or seeking advice that went beyond the scope of basic form preparation, Respondent Osborn should immediately have discontinued the appointment. Then, it would have been then incumbent upon Simental and Arellano to seek the advice of an attorney.

Although the PDJ recognizes that nonattorneys may provide competent and welcome assistance in translation, internet navigation, and the like to immigrant communities, any incompetence in the complexities of immigration law can have disastrous results. Respondent Osborn's misjudgment led directly to Arellano traveling to Mexico only to learn while there that she faced a ten-year bar to her reentry into the United States.

III. FINE, RESTITUTION, AND COSTS

C.R.C.P. 236(a) provides that, if a hearing master makes a finding of the unauthorized practice of law, the hearing master shall also recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each incident of the unauthorized practice of law. The People request here that the PDJ recommend the minimum fine of \$250.00 for each of the alleged three instances of unauthorized practice of law.

In assessing fines, 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.²⁹ In this case, Respondents engaged in a sole instance of unauthorized activity, and there is no evidence of any malice or bad faith. The PDJ finds that the minimum fine of \$250.00 is appropriate for Respondent Osborn's conduct in the Arellano matter.

²⁹ *People v. Adams*, 243 P.3d 256, 267-68 (Colo. 2010).


Next, the People request restitution in the amount of \$650.00 for Respondent Osborn's conduct in the Arellano matter.³⁰ The People's request is supported by Simental's affidavit and is consistent with his testimony at the hearing. The Colorado Supreme Court has deemed it appropriate to award restitution of any fees received for the unauthorized practice of law.³¹ The PDJ finds that restitution is warranted here, particularly given that Respondent Osborn's incompetent advice to Arellano conferred no meaningful benefit on her.

Finally, the People ask that Respondents be ordered to pay \$224.00 in costs, which reflects the People's administrative fee. Relying on C.R.C.P. 237(a), the PDJ considers this sum reasonable and therefore recommends that the Colorado Supreme Court assess \$224.00 in costs against Respondents.

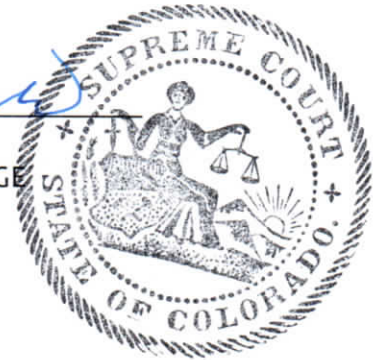
IV. RECOMMENDATION

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 also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondents to pay **RESTITUTION** of \$650.00, to a **FINE** of \$250.00, and **COSTS** of \$224.00.

DATED THIS 15th DAY OF JUNE, 2017.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



Copies to:

Kim E. Ikeler
Office of Attorney Regulation Counsel

Via Email
k.ikeler@csc.state.co.us

Antonio Lucero
Respondent's counsel

Via Email
ralucero@luceroandassoc.com

Christopher T. Ryan
Colorado Supreme Court

Via Hand Delivery

³⁰ See "Petitioner's Motion Regarding Restitution" filed by the People on June 6, 2017. Respondents filed a response on June 14, 2017, objecting to the amount of restitution.

³¹ *People v. Love*, 775 P.2d 26, 27 (Colo. 1989).