

10-9-2014

# Colafranceschi v. Briley Appellant's Brief Dckt. 41742

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IN THE SUPREME COURT OF IDAHO

STATE OF IDAHO,

Mark D Colafranceschi,

Plaintiff,

vs.

Briley, Robinson

Defendant.

Case No. CV 2012 376C

211142

Appellants Brief

APPELLANT'S BRIEF

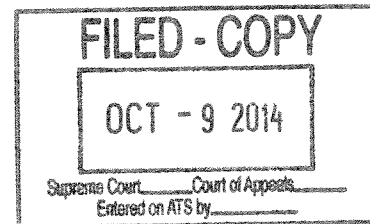


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**TABLE OF AUTHORITIES**

**Cases:**

*Jeffrey Kuberka, Respondent, vs. Anoka Mediation, Inc., et al., Appellants. A05-2490, Court of Appeals Unpublished, January 2, 2007* *Pg 7*  
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## **1. Introduction**

The appellant's action is distinctly different from cases that are supported by immunity for home study evaluators. Appellant claims that immunity is broken if the position was sought without qualification and through misrepresentation by the home study evaluator not holding licensure.

Appellant fully agrees that professionals acting in the Judicial Process should be granted immunity.

## **2. Argument**

In respondents brief there are several references to immunity for home study evaluators, guardian ad litem and mediators. Each of these positions performing different services to the court and each require a different set of professional requirements. For example Guardian ad litem are required to be listed on the supreme courts list and perform distinct function for the court. Home study evaluator requirements are set forth by Association of Family and Conciliation Courts Model Standards of Practice for Child Custody Evaluation and more importantly must be licensed by the state to be able to perform the evaluation. The

position of Home study evaluator is a powerful position similar to the power the Judge holds.

The respondent's analogy that what Ms. Robinson did was similar to a **licensed** (*emphasis added*) attorney getting appointed to be Judge when she did not have the experience she claimed - and in doing so would be covered with immunity in her actions. If this were the case the plaintiff would fully agree with the respondents that they have immunity. The key distinction is that a licensed attorney is not the same as law student or a graduate with a restrictive license. As all attorneys are fully aware that a law student is provided internships, externships and the ability to practice law prior to passing the bar given a "**restricted license**". These attorneys in the "making" must practice under the license of a professional in good standing with a minimum of three – five years experience, similar to Master Social Workers (Ashley Robinson) requirement to work under supervision of a Clinical Master Social worker with at least three years experience. The provisions and requirements for a limited/ restrictive license as a legal intern are set forth in Idaho Bar Commission Rule 226.

If a law student holding a restrictive license called themselves a licensed attorney prior to passing the bar and sought the position of Judge- where they fraudulently, or through misrepresentation made the powers at be believe they were qualified to be appointed to the Bench, and was in fact appointed to the position of Judge, we would have an accurate analogy to what the defendant – Ms. Robinson is faced with.

If in the hypothetical of the law student holding a restrictive licensed that was given the powerful position of Judge with the absolute immunity was later found that this appointed was an error caused by misrepresentation, fraud or other mistake and the restrictive licensed attorney/Judge caused harm upon clients that he/she oversaw as a Judge, the protection of absolute immunity would be stripped of the person in question. In summary this is the essence of the plaintiff's case. Even though the analogy of a law student with a restrictive license somehow becoming a Judge sounds **absurd** and **unlikely** to happen, we would hope that the spirit and purpose of immunity would not cloak this unqualified and unlicensed person with immunity. Plaintiff claims that it is absurd and insulting to licensed professionals that this was facilitated by Ms. Robinson and Ms. Briley.

The attainment of professional status requires the need for immunity in our

judicial system and has been established. The question remains - do the courts protect those who have not yet achieved the professional status, as in the case of Ms. Robinson or the fictitious law student holding a restrictive license seeking the powers of a Judge. If the courts adhere to the professional status and the need to protect those professionals in the judicial process it would seem important to ward off and deter those unqualified people that are not licensed that cloud and pollute the immunity privileges.

The etymology and historical meaning of the term professional is, "from Middle English, from profes, adjective, having professed one's vows, from Anglo-French, from Late Latin professus, from Latin, past participle of profitēri to profess, confess, from pro- before + fatēri to acknowledge; in other senses, from Latin professus, past participle". <http://www.merriam-webster.com/dictionary/profess>

Historically those in specialized trades would 'profess' their skill, and 'vow' to perform their trade to the highest possible standard. This is the foundation in granting Judges with absolute immunity. In protecting a professional Judge or other professional granted with immunity they can function freely without fear of retaliation. However the protection starts with the Judge having the professional credentials gained by experience and by legally having the licensee to practice law.



The same applies to different arms of the court each requiring experience and the proper license.

The case law presented by the respondents does not adequately address the main issue of this appeal. The respondents fail to show any case law that supports that an unqualified and unlicensed professional should be granted immunity. The only case that adequately examines this issue is the *Jeffrey Kuberka, Respondent, vs. Anoka Mediation, Inc., et al.*, case.

In this case we have defendant Ms. Robinson who held a restrictive license. Ms. Robinson sought out a powerful position that is reserved for experienced licensed professionals. If a graduate law student with a restrictive license acted outside the scope of his license and represented clients or sought a position that carried quasi or absolute immunity we would hope that the law would not protect that behavior by granting immunity.

With respect to defendant Shawn Briley who acted with complete disregard to ethic and legal obligation to her profession by secretly providing supervision,

while at the same time treating mother as her own client. Ms. Briley was not appointed as a court expert because of her clear conflict of interest. Ms. Briley actions are not covered by immunity because she was not a part of any court order. Ms. Briley claims to have witness immunity yet she did not testify as a witness. Ms. Briley's actions are analogous to a licensed attorney secretly helping the law student who somehow became a Judge. The attorney helping and guiding the law student Judge would not be covered by any type of immunity.

The defendants claim that plaintiff has alternative measures to recover damages, yet the *Jeffrey Kuberka, Respondent, vs. Anoka Mediation, Inc., et al.*, supreme cost ruling case conflicts with this statement.

In each of these cited cases plaintiffs are seeking for damages done by poor work, negligent work etc. None of these cases claim (as does this case) that the home study evaluator sought the position by misrepresentation or fraud and did not hold the proper license to do so. In The Kuberka case the threshold just required misrepresentation, not fraud.

In each of these cases the higher courts conclude that the plaintiff had the ability to alternative remedies. In this case plaintiff did not have the ability to remedy the actions of the home study evaluators. The curriculum vite of the home study evaluators was not submitted until a few days before trail and more importantly Ms. Robinson refused to testify as previously explained in appellant brief.

### **3. Conclusion**

Plaintiff moves this court to reverse the decision of the District Court in dismissing the action and allow for further discovery and jury trial.

Respectfully submitted this 8<sup>th</sup> day of October 2014

Mark D Colafranceschi  
323 Deinhard Lane Suites B  
McCall ID 83638  
208 315 1010



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Mark D. Colafranceschi

CERTIFICATE OF SERVICE

I, Mark D. Colafranceschi, hereby certify that a true and correct copy of this document:

**“APPELLANT’S BRIEF”**

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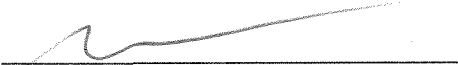
Idaho Court of Appeals  
PO Box 83720  
Boise ID 83720-0101

Joshua Evett 384.5844  
PO Box 1539  
Boise ID 83701

Kevin Scanlan 342.3299  
PO Box 7387  
Boise ID 83707

On behalf of Himself  
Date 8<sup>th</sup> day of October 2014

On behalf of Himself

  
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Mark D. Colafranceschi, *Pro Se*