Unauthorized Practice of Law

Nevada Laws, Regulations and Procedures for How To File A Complaint Against a “Notario Publico”

COMBATING NOTARIO FRAUD

Co-Sponsored by:
The American Bar Association Commission on Immigration;
The Thomas & Mack Immigration Law Clinic, UNLV; & Clark County Legal Services

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Overview

- Notary v. Notario Publico
- Consequences to Victims
- Individuals Authorized to Undertake Representation in Immigration Court
- Limits On What a Notary May Do
- State Penalties for Unlawful Practice of Immigration Law
- How to Lodge a Complaint
# Notary vs. Notario Publico

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<th>Notary</th>
<th>Notario</th>
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<td>A Notary may:</td>
<td>In Latin American countries, a notario publico is considered a high ranking official that must be a legal professional with the title of lawyer.</td>
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<td>– Take acknowledgements;</td>
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<td>– Administer oaths;</td>
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<td>– Take depositions;</td>
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<td>– Certify copies of documents not recordable in the public records;</td>
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<td>– Show that a disinterested party duly notifies the validity of a document;</td>
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<td>– Show that a signer is indeed who s/he says s/he is and that his/her reasons for signing are genuine.</td>
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<td>May charge a fixed fee for services, established by the State of Nevada, not to exceed $5.</td>
<td>Must charge based on an established fee schedule, which can reach thousands in U.S. dollars.</td>
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Notary v. Notario Publico
(The Problem)

Although “notario,” or the equivalent, in many other countries means that an individual is an attorney, this is not the case in the United States.

Thousands of immigrants are victimized by people who exploit this confusion and falsely represent themselves as “notarios.”

Common schemes include:
- Promising a quick work permit, then filing a fraudulent asylum application, leading to an order of removal (deportation).
  - Important to know whether removal ordered “in absentia”
- Falsely representing that a notario can reduce sentences on convictions or prepare complex appeals.
- Filing petitions for people barred by law from getting the benefit they seek.
Consequences

- Removal orders
- Applications for relief considered abandoned
- Persons made vulnerable to denial of benefits for allegedly providing false information (e.g., where the victim didn’t see or sign what the notario filed on their behalf)
- Thousands of dollars extorted from victims
People Who May Undertake Representation in Immigration Court

- A licensed attorney
- A law student supervised and accompanied by an attorney
- A BIA Accredited Representative (associated with a BIA accredited Organization) (see 8 CFR 292.2)
  - To verify whether a person (non-attorney) or agency is authorized to provide immigration legal services check the website of the Executive Office for Immigration Review (EOIR) at [http://www.usdoj.gov/eoir/statspub/raroster.htm](http://www.usdoj.gov/eoir/statspub/raroster.htm), for the most current list of agencies and individuals authorized to provide immigration legal services.
- A reputable individual who has a relationship with the immigrant which pre-exists the representation and who receives no payment for their assistance
  - See: 8 C.F.R. § 292.1(a)(1)-(6)
Limits of What a Notary May Do Regarding Immigration Matters

- May *not* prepare legal documents or act as a legal advisor unless he or she is a licensed attorney.

- Can provide clerical, secretarial, or translation assistance with immigration forms, so long as they don’t provide legal advice, and they may notarize these forms.
State Penalties For Unlawful Practice of Immigration Law
Basic Charging Statute for UPL

- The Unauthorized Practice of Law is governed by NRS §7.285

- “A person shall not practice law in this state if the person…Is not an active member of the State Bar of Nevada or otherwise authorized to practice law in this State pursuant to the rules of the Supreme Court.”

- First Offense = Misdemeanor
- Second Offense = Gross Misdemeanor
- Third Offense = Category E Felony, punishable by imprisonment of not less than 1 year and not more than 4 years, and a fine of not more than $5000.

- The State Bar of Nevada may bring a civil action to secure an injunction and any other appropriate relief.
Notaries Public

NRS §240.085 - Advertisements

Every notary public who is not an attorney licensed to practice law in this State and who advertises his services as a notary public in a language other than English … shall post or otherwise include with the advertisement a notice in the language in which the advertisement appears. The notice must be of a conspicuous size, if in writing, and must appear in substantially the following form:

“I AM NOT AN ATTORNEY IN THE STATE OF NEVADA. I AM NOT LICENSED TO GIVE LEGAL ADVICE. I MAY NOT ACCEPT FEES FOR GIVING LEGAL ADVICE.”

A notary public who is not an attorney licensed to practice law in this State shall not use the term “notario,” “notario publico” or any other equivalent non-English term in any form of communication that advertises his services as a notary public…
Notaries Public

NRS §240.030(1)(d) - $10,000 Bond

- Each person applying for appointment as a Notary Public must:
  - Enter into a bond to the State of Nevada in the sum of $10,000…

NRS §240.033(1)

- The bond required to be filed pursuant to NRS 240.030 must be executed by the person applying to become a notary public as principal and by a surety company … must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the notary public which violates a provision of NRS 240.001 to 240.169, inclusive.
Notaries Public (Penalties)

Violation of NRS §240.085 - Advertisements

- If the Secretary of State finds a notary public guilty of violating the provisions of subsection 1 or 2 of 240.085, he shall:
  - (a) Suspend the appointment of the notary public for not less than 1 year.
  - (b) Revoke the appointment of the notary public for a third or subsequent offense.

- A notary public who is found guilty in a criminal prosecution of violating subsection 1 or 2 shall be punished by a fine of not more than $2,000.
Notaries Public
(Penalties)

NRS §240.150 – Liability for misconduct or neglect

- For misconduct or neglect … a notary public … is liable on his official bond to the parties injured thereby, for all the damages sustained. 240.150(1)

- The employer of a notary public is liable for any damages proximately caused by the misconduct of the notary public… 240.150(2)

- Actions brought pursuant to §§240.150(1) and 240.150(2) are subject to a 3 year Statute of Limitation. Torrealba v. Kesmetis, 178 P.3d 716, 722-723 (Nev. 2008)
Notaries Public  
(Penalties)

Except as otherwise provided in the Chapter, a notary public or other person who violates a provision:

– May be fined not more than $2000 per violation;
– Appointment may be suspended as determined by the SOS; and/or
– Appointment may be revoked.

– NRS 240.150(4)

Can file complaint with Secretary of State
Deceptive Trade Practices – NRS 598.0903 et seq.

“…knowingly conducts business or occupation without all required state, county or city licenses…” NRS 598.0923

AG may bring an action in the name of the State of Nevada on behalf of the Commissioner or Director…may also institute criminal proceedings.

DA may bring action for temporary or permanent injunction.
Deceptive Trade Practices – NRS 598.0903 et seq.

**Civil Penalties**
- Up to $5000 per violation;
- Attorney’s fees and costs;
- Restraining order;
- Preliminary or permanent injunction;
- Costs of investigation, costs of instituting action;
- Restitution of money or property acquired;
- If victim includes elderly or disabled person, up to $12,500 additional penalty per violation. (Elderly or disabled person may also commence their own civil action)

**Criminal Penalties**
- First Offense = Misdemeanor
- Second Offense = Gross Misdemeanor
- Third Offense = Class D Felony, imprisonment of not less than 1 year and not more than 4 years and a fine of not more than $5000.
Deceptive Trade Practices – Private Cause of Action

NRS §41.600 provides a private right of action by any person who has been a victim of consumer fraud.

“Consumer Fraud” means:

– “A deceptive trade practice as defined in NRS 598.0915 to 589.0925, inclusive.”

If claimant is prevailing party, court shall award

– Any damages that he has sustained; and
– Costs and reasonable attorney’s fees.
False or Deceptive Advertising – NRS §207.170 et seq.

- It is unlawful for any person... to use, publish, disseminate, display or make or cause directly or indirectly to be used, published, disseminated, displayed...any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase, sell, lease, dispose of, utilize or acquire any title or interest in...any personal or professional services or to enter into any obligation or transaction relating thereto...” NRS 207.171

- It is sufficient in bringing any action pursuant to NRS 207.170 to 207.177, inclusive, that any statement referred to in NRS 207.171 has a tendency to deceive or mislead the public because of its false or deceptive or misleading character even though no member of the public is actually deceived or misled by such statement.
False or Deceptive Advertising – NRS §207.170 et seq.

- **Civil Penalties**
  - Up to $2500 for each violation; in an action brought by the AG or the DA.

- **Criminal Penalties**
  - First or Second Offense = Misdemeanor
  - Third and Subseq. Offenses = Gross Misdemeanor

- **Injunctions**
  - Violation of Injunction = Gross Misdemeanor
How to Lodge a Complaint
How to Lodge Complaints

**NV State Bar Association**
- Submit written complaint to appropriate office:
  - Southern NV: David Clark or Tiffany Bradley
    State Bar of Nevada Office of Bar Counsel
    600 E. Charleston Blvd., Las Vegas, NV 89104
    Tel: (702) 382-2200; Fax: (702) 382-8747
  - Northern NV: State Bar of Nevada Office of Bar Counsel
    9456 Double R Blvd. Suite B, Reno, NV 89521
    Tel: (775) 329-4100; Fax: (775) 329-0522; complaint@nvbar.org
- Instructions on website [http://www.nvbar.org](http://www.nvbar.org)

**Immigration Court (EOIR)**
- Submit written complaint (form E-44) to EOIR Office of the General Counsel, ATTN: Bar Counsel, 5107 Leesburg Pike, Ste. 2600, Falls Church VA 22041

**US Citizenship and Immigration Services**
- Submit E-44 to USCIS Office of the Chief Counsel, ATTN: Bar Counsel, 70 Kimball Ave., Room 103, S. Burlington, VT 05403
How to Lodge Complaints

Secretary of State’s Office
- To complain about a notary public, send letter and helpful documents (e.g., the Notario advertisement, business card, & office address) to Notary Division:
  - Attn: Notary Division, 101 North Carson Street Suite 3, Carson City, Nevada 89701-3714
  - Tel: (775) 684-5708; Fax (775) 684-7141

Nevada Department of Business and Industry – Consumer Affairs Division
- Complaint form online at www.fyiconsumer.org; mail to Nevada Consumer Affairs Division, 1850 East Sahara Suite 101, Las Vegas, Nevada 89104
- Tel: (702) 486-7355
How to Lodge Complaints

Office of the Attorney General – Bureau of Consumer Protection

– Brings complaints to protect public interests, not to advance monetary interests of individuals.
– Complaint form online at http://ag.state_nv.us/org/bcp/complaint.htm
– Send to appropriate address


N.NV: Office of the Attorney General Bureau of Consumer Protection, 100 North Carson Street, Carson City, NV 89701 – Fax (775) 684-1170
How to Lodge Complaints

Better Business Bureau of S. Nevada
  – (702) 320-4500; www.vegasbbb.org

Better Business Bureau of N. Nevada
  – (775) 322-0657  http://reno.bbb.org
Some Things to Keep in Mind When Filing A Complaint With the Secretary of State’s Office and/or the Attorney General’s Office

The purpose of filing this type of complaint is not necessarily to get money back from the immigration consultant but to notify the state agency about possible deceptive and unfair business practices. If enough complaints are filed about the same immigration consultant, the state agency might take action against the individual to stop the deceptive or unfair practices.

Remember: it is the client’s decision as to whether to file a complaint against an immigration consultant. If you decide to assist a client, you should make sure that the client understands the pros and cons of filing such a complaint.

- For example, the anti-immigrant sentiment that is apparent in many states might lead some state officials to question whether they should report undocumented people to the Department of Homeland Security.