Unauthorized Practice of Law

New York 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 & Lutheran Social Services of New York

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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

**Notary**

- A Notary may:
  - Take acknowledgements;
  - Administer oaths;
  - Take depositions;
  - Certify copies of documents not recordable in the public records;
  - Show that a disinterested party duly notifies the validity of a document;
  - Show that a signer is indeed who s/he says s/he is and that his/her reasons for signing are genuine.

- May charge a fixed fee for services, established by the State of New York, not to exceed $2.

**Notario**

- In Latin American countries, a notario publico is considered a high ranking official that must be a legal professional with the title of lawyer.

- A Notario Publico (outside of the U.S.) may:
  - Be an arbitrator;
  - Be a mediator;
  - Issue judicial proceedings;
  - Ensure that documents such as by laws of companies, wills, deeds, powers of attorney, real estate purchases and establishment of trusts do not include any legal inconsistencies.

- Must charge based on an established fee schedule, which can reach thousands in U.S. dollars.
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, for the most current list of agencies and individuals authorized to provide immigration legal services.
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
The Unauthorized Practice of Law is governed by New York’s Judiciary Law.

“It shall be unlawful for any person to practice or appear as an attorney-at-law...for a person other than himself...or to hold himself out to the public as being entitled to practice law...” - §478

“It shall be unlawful for any person to maintain...on such property a sign, in any language, to the effect that an attorney-at-law or legal services are available therein unless the full name of the attorney-at-law unless the full name of the attorney...or firm rendering such services is set forth thereon.” - §483

“No person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court...unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record in the state...” - §484
Basic Charging Statute for UPL (Penalties)

- Any person violating the provisions of sections 478, 479, 480, 481, 482, 483 or 484, shall be guilty of a misdemeanor. -§485

- The Supreme Court may also punish for criminal contempt, any person who unlawfully practices or assumes to practice law. -§750
NY State Immigrant Assistance Services
(NY Gen. Bus. Ch. 20 Article 28-C)

An “immigrant service provider” shall not give legal advice, or otherwise engage in the practice of law...assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language, or represent or advertise other titles or credentials, including...”notary public”, “accredited representative of the board of immigration appeals” or “immigration consultant,” that could cause a customer to believe that the person possesses special professional skills...” -§460-e
An immigrant service provider must:

- Post signs at every location where provider meets with customers, in English and any other language that the person provides assistance, that states:

  “THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU UNDER THIS CONTACT IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION TO YOU BEFORE THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE”.

-§460-c
NY State Immigrant Assistance Services

An immigrant service provider must also:
– Post or include in advertisements a notice that states:

“THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION TO YOU BEFORE THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE”.

-§460-d
NY State Immigrant Assistance Services

Other requirements include, but are not limited to:
- Providing a service contract;
- Retention of documents, guidelines;
- Posting a bond

Penalties
- Upon application made to the AG
  - Civil = Injunction; restitution; civil penalties up to $7500 per violation
  - Criminal = Class A misdemeanor; court may also order restitution or reparation to victim as part of sentence
NY City Immigration Assistance Services
(NY Code §20-770 through §20-780)

Prohibited Conduct (§20-771)-during the course of providing immigration assistance, may not:
- State or imply that one can obtain special favors;
- Retain fees for services not performed;
- Fail to provide copies of documents;
- Assume, use or advertise the title of lawyer or attorney, or equivalent…including…”Notary Public,” “Accreditted Representative of the BIA” or “Immigration Consultant”…;
- Give legal advice or engage in the practice of law;
- Etc…(several more listed)
An individual providing Immigration Assistance must:

- Maintain a $50,000 bond;
- Provide a written contract that itemizes all services, and that lists all fees and costs to be charged for services. Must be written in English and language of the customer;
- Post signs and disclaimers in advertising stating that provider is not an attorney or accredited by the BIA, and that providers may not give legal advice. Signs must be conspicuously posted and in all languages in which services are provided at the location;
- Retain for 3 years, copies of all documents prepared or obtained for the customer;
- Allow consumers to cancel any contract within 3 days and receive a full refund.
Penalties

- **Civil**
  - Civil penalty of $250-$2500 for first violation;
  - $500-$5000 for any subsequent violation;
  - Action commenced by the department of consumer affairs

- **Criminal**
  - Class A Misdemeanor

- **Private Civil Action**
  - Any person claiming to be injured shall have a cause of action for any or all of the following relief:
    - Compensatory and Punitive damages;
    - Injunctive and Declaratory relief;
    - Attorney’s Fees and Costs; and
    - Such other relief as a court deems appropriate
Other Causes of Action

- **Scheme to Defraud**
  - NY Penal Law §§190.65-190.60

- **Larceny and Grand Larceny**
  - NY Penal Law §§155.05-155.42

- **Official Misconduct (by a notary)**
  - NY Penal Law §195.00

- **Notary public or commissioner of deeds; acting without appointment; fraud in office**
  - NY Executive Law §135-a
Examples

- July, 2000- Angie Codina, who fraudulently portrayed herself as an immigration lawyer and victimized hundreds of people seeking to become US Citizens was sentenced to a term of 9.3 to 28 years in prison and ordered to pay $108,840 in restitution.

- September 2006- Judgment against Christine Owad, a woman who posed as an immigration consultant and defrauded dozens of people. $105,000 in civil penalties; $2000 in costs; $197,898 in restitution for 55 victims.

- March 2007- Attorney General Cuomo helped secure a second judgment against Owad. $89,357.75 in restitution for 24 victims, and an additional $60,00 in civil penalties to the State.

**Note**: the Owad case was the first applying the Immigrant Assistance Services Law for the State of NY.
How to Lodge a Complaint
How to Lodge Complaints

- **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

Office of the Attorney General – Bureau of Consumer Frauds and Protection
- Brings complaints to protect public interests, not to advance monetary interests of individuals.
- Complaint form online at:
  - http://www.oag.state.ny.us/complaints/complaints.html
- Send to
  - Office of the Attorney General, Bureau of Consumer Frauds and Protection, 120 Broadway, 3rd Floor, New York, NY 10271-0332
  - Consumer Hotline: (800) 771-7755
How to Lodge Complaints

- New York City Department of Consumer Affairs
  - Has jurisdiction under the NY City Immigration Assistance Services law.

  - Complaint form found online at:
    - Mail to: New York City Department of Consumer Affairs, 42 Broadway, 9th Floor, New York, NY 10004.

  - Or to file a complaint you can call 311, the City’s 24 hour hotline or (212) 639-9675 if outside of City.
Some Things to Keep in Mind When Filing A Complaint

- 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.

- Note: In NY City, under Executive Order 41 by the Mayor, NYC officials will not report a person’s unlawful immigration status when they are seeking help from a law enforcement agency.