

Unauthorized Practice of Law

Colorado Laws, Regulations and
Procedures for how to bring a
claim against a “Notario Publico”

Overview

- Notary v. Notario Publico
- Consequences to Victims
- Individuals Authorized to Undertake Representation in Immigration Court
- Limits On What a Notary May Do
- Filing an Unauthorized Practice of Law Complaint
- Relevant Laws

Notary vs. Notario Publico

Notary

- An individual appointed by the state government to witness the signing of important documents and administer oaths.
- Under C.R.S. § 12-55-110.3, a notary may not prepare legal documents or act as a legal advisor unless he or she is a licensed attorney.
- Under the same section, a notary cannot use the words “notario” or “notario publico” in advertising, cannot claim to be an immigration consultant or expert, and cannot claim to provide legal services unless the notary is also a licensed attorney.

Notario

- In Latin American countries, a notario publico is considered a high ranking official with considerable legal skills and training. Unlike a US Notary, they draft documents, provide legal advice and settle disputes.

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.
- 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.
- *Can* provide clerical, secretarial, or translation assistance with immigration forms, so long as they don't provide legal advice, and then may notarize these forms.

Filing a UPL Complaint Against a “Notario”

- Colorado Supreme Court Attorney Regulation Counsel
- Private Civil Action for money damages brought under the Colorado Consumer Protection Act

Filing a Complaint with the Colorado Supreme Court Attorney Regulation Counsel

- Some things to keep in mind before 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.

Filing a Complaint with the Colorado Supreme Court Attorney Regulation Counsel

- The first step is to provide a written request for investigation to:
 - Colorado Supreme Court Attorney Regulation Counsel, 1560 Broadway, Suite 1800, Denver, CO 80202. Phone: (303) 866-6400
- The request can be in letter form, and should include:
 - Client's name, address and phone number;
 - The name, address and phone number of the non-lawyer;
 - Facts on which the allegations are based; and
 - Copies of any court papers, documents, letters or other materials that pertain to your client's allegations. (Do not include originals)
- The complaint will first be reviewed to determine if the office has jurisdiction. If so, an investigation will take place and it will be assigned to an attorney within the trial division of the Office of Attorney Regulation.
- If, at the conclusion of the investigation, the trial attorney does not believe unauthorized practice of law occurred, the matter will be dismissed. On the other hand, if the trial attorney does believe that there was unauthorized practice of law, the matter will be forwarded to the UPL Committee.

Filing a Complaint with the Colorado Supreme Court Attorney Regulation Counsel (UPL Committee)

- The UPL Committee is comprised of both lawyers and non-lawyers selected by the Colorado Supreme Court to serve in a review capacity. The Committee has jurisdiction to investigate complaints, conduct hearings, including through a Special Master and to file civil injunctions and contempt proceedings.
- If the UPL Committee determines that the individual did engage in the Unauthorized Practice of Law:
 - May request that individual sign an agreement to refrain from other UPL;
 - If individual will not sign, the UPL Committee can recommend injunctive proceedings and/or criminal contempt proceedings.
 - If this happens, your client may be required to testify.
- Investigations are usually completed within 8 months
- For a list of individuals ordered to stop engaging in the unauthorized practice of law, see http://www.coloradosupremecourt.com/Regulation/UPL_Injunction_Listing.htm

Private Civil Action

- A private citizen may bring an action against a “notario” under the Colorado Revised Statutes §6-1-105 Deceptive Trade Practices and C.R.S. §12-55-116.
 - **C.R.S. §12-55-10.3** refers to Advertisements for services-unauthorized practice of law-prohibited conduct-penalties.
 - **“Knowing and willful violation of the provisions of this section shall constitute a deceptive trade practice pursuant to section 6-1-105, C.R.S., and shall also constitute official misconduct pursuant to section 12-55-116.” C.R.S. §12-55-10.3(4).**

Damages For Deceptive Trade Practice; §6-1-105

- C.R.S. §6-1-105(1)(vv) states that: “ A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, such person... Violates section 12-55-10.3, C.R.S.”
- C.R.S. §6-1-113. Damages.
 - Damages are available to any “actual or potential consumer of defendant’s goods, services, or property and is injured as a result of such deceptive trade practice...”
 - Any person who, in a private civil action, is found guilty under this article, shall be liable for:
 - (a) The greater of:
 - (I) The amount of actual damages sustained; or
 - (II) Five hundred dollars; or
 - (III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus
 - (b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.
- C.R.S. §6-1-115. Limitations
 - “All actions brought under this article must be commenced within three years after the date on which the false, misleading, or deceptive act or practice occurred or the date on which the last in a series of such acts or practices occurred or within three years after the consumer discovered...”

Filing a Complaint with the Secretary of State

- If the “immigration consultant” is a licensed notary within the state of Colorado, you may also file a complaint with the Secretary of State.
- The complaint form can be found on their website at:
 - http://www.sos.state.co.us/pubs/Bingo_Raffles/main.htm