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Policy Directive

Policy Directive 2016-__

Processing Complaints Alleging the Unauthorized Practice of Law by Non-Attorneys

Introduction

In addition to evaluating complaints against attorneys for possible violations of the Rules of Professional Conduct or State Bar Act, the Office of Chief Trial Counsel (OCTC) also evaluates “non-attorney complaints,” i.e., those alleging the unauthorized practice of law (UPL) by individuals who are not members of the State Bar of California.

OCTC’s evaluation of a non-attorney complaint focuses squarely upon whether there is evidence that the non-attorney has practiced law, or held himself or herself out as practicing or entitled to practice law. This includes where the non-attorney, in any document, including advertisements, stationery, letterhead, business cards, or other comparable written material, literally translated from English into another language words such as “notary public,” “notary,” “licensed,” “attorney,” or “lawyer,” that imply that the person is an attorney. The literal translation of the phrase “notary public” to “notario publico” or “notario” is expressly prohibited.

Unlike attorney complaints, which are prosecuted before the State Bar Court, OCTC brings enforcement actions against non-attorneys before the superior courts and pursuant to specific statutory authority, as described further below. The purpose of this policy directive is to clarify OCTC’s evaluation and processing of non-attorney complaints, and to ensure that OCTC promptly and efficiently processes all such complaints with the goal of protecting the public from individuals who engage in UPL.

Relevant Rules

Business and Professions Code section 6044.5 provides that the State Bar shall disclose, in confidence, information not otherwise public to the appropriate agency for criminal or disciplinary enforcement when the State Bar’s investigation or formal proceeding concerns misconduct which may

subject the individual in question to criminal prosecution or disciplinary charges. By its terms, section 6044.5 applies to a member of the Bar, and not to anyone who is not a member of the Bar.

Business and Professions Code section 6125 provides that no person shall practice law in California unless the person is an active member of the State Bar.

Business and Professions Code section 6126(a) provides that any person unlawfully holding himself or herself out as practicing or entitled to practice law is guilty of a misdemeanor.

Business and Professions Code section 6126(b) provides that a disbarred attorney who engages in UPL may be charged with a misdemeanor or a felony.

Business and Professions Code section 6126.3 provides that, in addition to criminal penalties and contempt proceedings, California courts shall have jurisdiction when a person unlawfully advertises or holds himself or herself out as practicing or entitled to practice law. The State Bar may apply to the superior court for assumption by the court of jurisdiction over the practice to the extent provided by statute.

Business and Professions Code section 6126.4 provides that Section 6126.3 applies to a person acting in the capacity of an immigration consultant who advertises or holds himself or herself out as practicing or entitled to practice law.

Business and Professions Code section 6126.7 provides that it is a violation of Section 6126 for a non-attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words, such as “notary public,” “notary,” “licensed,” “attorney,” or “lawyer,” that imply that the person is an attorney. The literal translation of the phrase “notary public” to “notario publico” or “notario” is expressly prohibited by this section. A person who violates this section shall be subject to civil penalty not to exceed \$1000 per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

Business and Professions Code section 6127 provides that acts of UPL are contempt of the authority of the courts.

Intake Process

Intake Evaluation

When OCTC becomes aware of an allegation that a non-attorney has practiced or held

himself or herself out as practicing or entitled to practice law in California, OCTC's Intake Unit shall open a non-attorney complaint for evaluation and processing. The Intake Unit's evaluation and processing of a non-attorney complaint shall include:

- Opening a case record in OCTC's case management system, using the "complaint form received" (CFR) date, which is the date the State Bar first received the complaint.
- Creating a summary of the allegations in the case record and inputting staff assignment codes.
- Identifying the source of the complaint.
- Identifying the relevant practice area of law (e.g., immigration, loan modification, debt resolution) and recording the practice area in OCTC's case record.
- Identifying whether allegations include potential identity theft of a licensed attorney's identity, and, if so, contacting the victim attorney to verify whether the attorney is aware of the potential identify theft and has notified law enforcement.
- Evaluating the non-attorney complaint for UPL allegations, which includes:
 - ❖ Opening a corresponding attorney complaint case record, where appropriate, such as where the non-attorney complaint also identifies a licensed California attorney potentially aiding or abetting the non-attorney.
 - ❖ Seeking additional information from the complainant or other sources (e.g., internet search) where the non-attorney complaint does not provide specific or sufficient facts to establish that the unauthorized practice of law may have occurred.
- Determining whether to forward the complaint to the Enforcement Unit for investigation.
 - ❖ If the complaint sufficiently alleges a UPL violation, Intake shall:
 - Forward the complaint to the Enforcement Unit for further action;
and
 - Refer the matter to law enforcement or other appropriate agency for consideration of criminal or other enforcement action, as specified below under the heading, Intake Resolutions.
 - ❖ If the complaint sufficiently alleges the use of "notario" or "notario publico," or other words or phrases, in violation of section 6126.7 (or there is other evidence of a violation of section 6126.7), forward the complaint to the Enforcement Unit for further action.

- ❖ If the complaint does not sufficiently allege a UPL violation or violation of 6126.7, Intake shall:
 - Notify the complainant in writing of the determination;
 - Advise the complainant in writing of the opportunity to seek reconsideration of the closing decision; and
 - Process the case for closure, including updating the case record.

Intake Resolutions

Intake Staff shall resolve non-attorney complaints by either (1) forwarding the non-attorney complaint to OCTC's Enforcement Unit, or (2) closing the non-attorney complaint in Intake.

Non-attorney complaints alleging UPL are presumed to warrant a law enforcement referral to federal, state or local authorities (e.g. U.S. Attorney's Office, California Attorney General's Office, local district attorney offices, local county counsel offices, and/or local city attorney offices) for criminal or other enforcement action. After Intake forwards a non-attorney complaint, OCTC's Enforcement Unit shall make the referral, where appropriate, and coordinate with law enforcement, as appropriate, throughout OCTC's investigation.

While Enforcement will make law enforcement referrals, Intake may make other types of referrals where the non-attorney complaint does not allege UPL, but warrants referral to another regulatory agency. Examples of other regulatory agencies are attorney regulation offices in other states, the Department of Real Estate, Department of Consumer and Business Affairs, the U.S. Securities & Exchange Commission, the Federal Trade Commission, and the U.S. Patent and Trademark Office.

Intake Time Standards

Intake Staff shall evaluate non-attorney complaints, adhering to the time standards stated herein. Recognizing that certain complaints may take longer to process than others, Intake Staff shall strive to meet the following goals in at least 90% of non-attorney complaints:

- Open a non-attorney case record within five (5) days from the CFR date (received date).
- Complete the initial legal review ("read") of non-attorney complaints within 20 days from the CFR date.

- Process non-attorney complaints to resolution (i.e., close or forward for investigation) within 60 days from the CFR date.

Intake Processing Activities

Intake Staff shall maintain processing activities in the non-attorney complaint case record, including the recording and tracking of other regulatory agency referrals made in connection with non-attorney complaints.

Enforcement Unit Process

All non-attorney complaints forwarded by the Intake Unit to OCTC's Enforcement Unit shall be investigated to determine whether there is evidence of UPL or any violation of section 6126.7. There shall be an appropriate law enforcement referral upon assignment to Enforcement Staff. All non-attorney complaints forwarded by the Intake Unit to the Enforcement Unit shall be investigated to determine whether there is evidence of UPL or any violation of section 6126.7. Assigned Enforcement Staff shall update any law enforcement agency to which it referred a non-attorney complaint with the status and findings of the investigation as it proceeds. Upon completion of an investigation, Enforcement Staff will analyze the evidence to determine whether the evidence is sufficient to support formal proceedings in superior court.

Investigation Resolutions

Enforcement Staff shall complete non-attorney complaint investigations to resolution by either (1) filing enforcement proceedings in superior court, (2) issuing a cease and desist letter, or (3) closing the complaint with no further action.

Enforcement staff may issue a cease and desist letter where the UPL activity appears isolated in nature and unlikely to recur, or where it otherwise appears that a cease-and-desist warning will sufficiently address and stop the activity at issue.

Enforcement Time Standards

Enforcement Staff shall investigate non-attorney complaints adhering to the same backlog time standard applicable to attorney discipline complaints, namely resolving complaints within six (6) months from the CFR date (i.e., Intake received date).

Enforcement Processing Activities

Enforcement and Intake Staff shall, as appropriate, maintain and update processing activities in the non-attorney case record, as follows:

- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.3.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.4.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.7.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6127.
- Record and track the number of law enforcement referrals made in connection with non-attorney complaints.
- Record and track the number of other agency referrals made in connection with non-attorney complaints.
- Record and track the number of cease-and-desist letters issued in connection with non-attorney complaints.