

**DATE:** April 25, 2013

**TO:** Members, Board Committee on Stakeholder Relations

**FROM:** Joseph Dunn, CEO; Jayne Kim, Chief Trial Counsel

**SUBJECT:** Immigration Fraud: Discussion of Potential Developments and the State Bar Role

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### **EXECUTIVE SUMMARY**

Hearings have begun in Washington on proposed comprehensive immigration reform legislation. Although it is impossible to know when and if immigration reform will ultimately be enacted, it is imperative that the State Bar be prepared to address the increase in fraudulent scams that we anticipate will be perpetrated against undocumented Californians, whether by lawyers or non-lawyers.

Increases in fraudulent activity have been experienced around the country whenever immigration reform legislation has been implemented over the last twenty-five years. The impact in California will be particularly challenging, since there are an estimated 2.6 million undocumented Californians – nearly one quarter of the total national estimate of 11 million individuals.

At your May meeting, a presentation will describe the activities that are being undertaken to prepare for the expected increase in fraudulent activity, including how the State Bar is working with law enforcement on this issue. You will also hear about the State Bar-organized summit in March which brought together many of the federal, state and local agencies who are trying to combat the problem. Finally, you will hear a brief overview of the proposed legislation.

For further information on this agenda item, please contact Mary Flynn at [mary.flynn@calbar.ca.gov](mailto:mary.flynn@calbar.ca.gov); (415) 538-2251.

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### **BACKGROUND/DISCUSSION**

Proposed immigration reform legislation, entitled “Border Security, Economic Opportunity, and Immigration Modernization Act” has now been released and hearings have begun in the U.S. Senate. We anticipate increases in fraudulent activity by both lawyers and non-lawyers, because that has been the experience around the country whenever immigration reform legislation has been implemented over the last twenty-five

years. The impact in California will be particularly challenging, since there are an estimated 2.6 million undocumented Californians – nearly one quarter of the total national estimate of 11 million individuals. Los Angeles County, alone, accounts for just under one million unauthorized immigrants.

In March, the Office of Chief Trial Counsel (OCTC) organized a summit bringing together federal, state and local agencies who are trying to combat the problem. Participants included representatives from OCTC, the U.S. Attorney's Office, Immigration Customs Enforcement, U.S. Citizenship and Immigration Services, Los Angeles County Department of Consumer Affairs and local district attorney offices. The interagency summit consisted of two major components: (1) a morning session dedicated to educating the public and (2) an afternoon session focused on strategy discussions between the various agencies. The summit's education component included an overview of the Immigration Court system and ways to identify immigration consultant fraud. The afternoon strategy session, which was closed to the public, included discussion of specific investigations and investigation plans.

Two of the key speakers from that conference will be present at your May Stakeholders meeting. That presentation will describe the activities that are being undertaken to prepare for the expected increase in fraudulent activity, including how the State Bar is working with law enforcement on this issue, and you will also hear a brief overview of the proposed legislation.

A recent article in CalBarJournal described some of the issues we expect to face:

Immigration is one area where non-attorneys are allowed to assist consumers in completing forms, translating documents and submitting forms. But dishonest immigration consultants charge consumers for forms they can get for free and make false promises that extra fees will give the immigrant a leg up in the process, officials said at the summit. Some identify themselves as "notarios," which, unlike notaries in the United States, are allowed to practice law in some Latin American countries.  
<http://www.calbarjournal.com/April2013/TopHeadlines/TH1.aspx>

Other publications have been reporting on similar concerns. For example, a reporter with The Oregonian states:

Experts say the increase in unlicensed notaries is a byproduct of immigration talk. Every swell in national conversation brings a new wave of fraud....

Teresa Statler, unauthorized practice of law liaison for the Oregon chapter of the American Immigration Lawyers Association, said those cases evidence the recent uptick in fraudulent notarios and the issues they pose.

"If we get immigration reform, these people are going to come out of the woodwork," she said. "We'll be left to maybe clean up the mess."

[http://www.oregonlive.com/hillsboro/index.ssf/2013/03/talk\\_of\\_immigration\\_reform\\_spa.html](http://www.oregonlive.com/hillsboro/index.ssf/2013/03/talk_of_immigration_reform_spa.html)

### **Historic Evidence of Immigration Fraud:**

Increases in fraudulent activity have been experienced around the country whenever immigration reform legislation has been implemented over the last twenty-five years. For example, a March 23, 1997, New York Times article entitled “Deadline Fear Exposes Many Immigrants to Fraud”, reported on a similar spike in immigration fraud just before an earlier amnesty deadline:

With just a week before provisions of a strict new Federal immigration law take effect, fear is driving many more immigrants in New York to gamble their money on the services of such self-described immigration experts, who promise miracles but rarely deliver more than bills and disappointment, advocates for immigrants say...

In most cases, it is a near-perfect crime -- a fact not lost on unscrupulous operators. Immigrants, especially illegal immigrants, are "perfect patsies because they don't know where to turn," said Antonio Meloni, executive director of Immigration Advocacy Services, a nonprofit organization in Astoria, Queens, that has counseled dozens of fraud victims. "There's no upside for them coming forward to complain."

The schemes that snare them have been around for more than a decade: "tricks" to improve the chances of winning the completely random green-card lottery, help in extending visas that cannot be extended, reams of meaningless paperwork that immigrants believe will secure work visas or speed the naturalization process.

But the so-called consultants, expeditors, notaries and lawyers have stepped up their activity in recent months. Those who provide free immigration help say fraudulent consultants are now aggressively preying on anxieties surrounding April 1, a date that has taken on dreaded implications in many immigrant communities because parts of the new law will go into effect, making it harder -- but not impossible -- for immigrants to enter the country or remain here while applying for residency. <http://www.nytimes.com/1997/03/23/nyregion/deadline-fear-exposes-many-immigrants-to-fraud.html?pagewanted=all&src=pm>

### **Information on the “Border Security, Economic Opportunity, and Immigration Modernization Act”**

At your meeting, you will also hear an update on the status of recently proposed comprehensive immigration reform. The full text of the bill currently before the U.S. Senate is S.744.IS, available through the Library of Congress.

<http://thomas.loc.gov/cgi-bin/query/D?c113:12:./temp/~c113W3xdFM::>

...[T]he "Border Security, Economic Opportunity, and Immigration Modernization Act," [is] an [844-page document](#) that addresses border security, undocumented immigrants and the legal immigration system.

The wide-ranging bill would allow undocumented immigrants to become citizens after a lengthy process and after border security improvements, along with strengthened enforcement and changes to the way visas are doled out. It would require employers to check job applicants through the government's online E-Verify system to ensure they are authorized to work in the U.S. And it would shift the country toward merit-based visas based on work, away from family-based visas. [http://www.huffingtonpost.com/2013/04/17/gang-of-8-bill-immigration\\_n\\_3104200.html?utm\\_hp\\_ref=immigration-reform](http://www.huffingtonpost.com/2013/04/17/gang-of-8-bill-immigration_n_3104200.html?utm_hp_ref=immigration-reform)

A more in-depth summary of the bill can be found at Roll.Call.com:

Under the bill, unauthorized immigrants may apply to receive legalized status, known as Registered Provisional Immigrant Status.

In order to be eligible, an individual must have immigrated to the United States prior to Dec. 31, 2011, and maintained a continuous physical presence since then.

The individual must also pay a \$500 fine, but those eligible for the DREAM Act — a bill that provides a path to citizenship to those brought illegally as children — would be exempt from the fine.

The individuals would also be assessed taxes, and adults would be required to pay the cost of processing their application.

Under the bill, spouses and children of people in provisional status can be petitioned for as derivatives of the principal applicant, but must be in the United States at the time.

The bill would allow those in provisional status to apply for a green card, or permanent residency, after 10 years.

People eligible for the DREAM Act and who are in the farm workers program can get their green cards in five years and DREAM Act kids will be eligible for citizenship immediately after they get their green cards.

The bill also looks to strengthen border security...

About six months after the bill is enacted, the Homeland Security Secretary would submit a plan — "Comprehensive Southern Border Security Strategy" —

for achieving and maintaining effective control in all high-risk border sectors along the Southern border...

“No immigrant in undocumented status may be adjusted to ‘Registered Provision Immigrant’ (RPI) legal status until the Secretary has submitted to Congress the Notice of Commencement upon completion of each of the Comprehensive Southern Border Security Strategy and the Southern Border Fencing Strategy,” the summary said.

[http://www.rollcall.com/news/schumer\\_mccain\\_issue\\_summary\\_of\\_immigration\\_bill-224051-1.html](http://www.rollcall.com/news/schumer_mccain_issue_summary_of_immigration_bill-224051-1.html)

### **The Coordinated Law Enforcement Response:**

National, state and local law enforcement, as well as nonprofit groups have been working in partnership to counter immigration fraud for many years, and their efforts are gearing up right now. As evidenced by the March summit, the State Bar has been very involved with those efforts. Coordinated efforts are taking place across the country to help eliminate much of the fraud through extensive education and outreach. These efforts are particularly important here because of the high numbers of unauthorized immigrants in California.

As a description of the kinds of scams that immigrants face, the following list of common immigration scams is posted on the website of the California Attorney General:

- Making false promises and implying he or she has special influence with the INS. Nobody can guarantee you a work permit or any other immigration benefit.
- Posing as an immigration consultant or lawyer when he or she is not qualified to do so.
- Taking a consumer's money and not delivering any services.
- Persuading a consumer to lie on an application or to an INS agent.
- Keeping a consumer's original documents and charging money to get the documents back.
- Filing a frivolous application. For example, filing an application for political asylum on behalf of a consumer who does not qualify for asylum.
- Charging the consumer a total price for all services up front, then demanding more and more money to continue doing work for the consumer.

[http://oag.ca.gov/consumers/general/immigration\\_consultants](http://oag.ca.gov/consumers/general/immigration_consultants)

### **CONCLUSION**

The State Bar's Office of Chief Trial Counsel will continue to build alliances with our law enforcement and regulatory partners in order to stay ahead of what may be a wave of State Bar complaints related to immigration fraud. OCTC will consider planning a follow-up summit next year.