

**UNAUTHORIZED PRACTICE OF LAW AND
IMMIGRATION
ATTORNEY MISCONDUCT SUMMIT
ACTION SUMMARY
MAY 19, 2016**

OVERVIEW

On May 19, 2016, the State Bar convened a summit with immigration legal services providers and other knowledgeable stakeholders to discuss strategies for effective investigation and enforcement of unauthorized practice of law (UPL) and immigration attorney misconduct. attendees came from throughout the state and shared their perspectives, identified challenges, and made recommendations; a list of attendees is attached. They were joined by a member of the State Bar's Board of Trustees, senior staff, representatives of the Office of Chief Trial Counsel (OCTC), and the Legislature.

CHALLENGES IDENTIFIED BY THE GROUP

- Lack of right to counsel in immigration proceedings
- Lack of competent attorneys (particularly in rural parts of the state)
 - Ineffective advice leading to negative consequences including, in some instances, removal proceedings
- Lack of funding and resources to meet needs
- Lack of education and information
 - For community members, concerns about the process and how to locate qualified service providers
 - For the legal profession, concerns regarding immigration issues/law and how to locate qualified service providers
- Notarios often charge more than attorneys and are unregulated and untrained
- Lack of accountability when problems are identified:
 - State Bar viewed as unresponsive
 - Scope of State Bar's jurisdiction unclear
 - Lack of attention by law enforcement
 - Law enforcement agencies sometimes refuse to act on reports
 - Weak legal remedies
 - Multiplicity of agencies for reporting problems creates confusion

- Explanations for under-reporting:
 - Vulnerable victims are afraid to step forward
 - Lack of trust in government institutions and law enforcement
 - Lack of information regarding where to report
- Problems exist beyond immigration law
 - This population is also vulnerable to fraud in the context of housing, employment, and consumer issues
 - Tax preparation services serving this community often problematic

RECOMMENDATIONS

Summit participants recommended a number of specific strategies both to prevent and respond to UPL and immigration attorney misconduct. A summary of these strategies is provided below:

- Guarantee and fund the right to counsel in immigration proceedings broadly
- Increase internal competence and awareness of State Bar about immigration issues by hiring OCTC staff with immigration expertise and providing immigration training to staff.
- Engage in affirmative and proactive efforts including but not limited to the following:
 - consumer education
 - attorney education (immigration law MCLE)
 - aggressive and timely investigation and referral to law enforcement or other states' lawyer regulation authorities
 - aggressive and timely prosecution and assumption of practice where warranted
 - timely follow up on referrals to law enforcement and/or other states' lawyer regulation authorities
- Explore new avenues for holding out-of-state attorneys accountable:
 - when an out-of-state attorney provides immigration services in state court (e.g. special immigrant juvenile status (SIJS) petitions), assume jurisdiction over the practice where possible
 - consider expansion of the pro hac vice registration model (for out-of-state attorneys practicing in state courts) to include immigration attorneys where possible
- Increase penalties for California attorneys who aid and abet UPL and publicize consequences
- Update state law regarding "immigration consultants" to change the title to one that makes clear that these individuals are not lawyers and may not engage in legal consultation

- Cap fees that non-attorneys are allowed to charge for their services
- Consider use of intermediary organizations to provide assistance (Qualified Designated Entities funded under IRCA as a potential model)
- Create a private right of action to prosecute UPL or other immigration violations
- Consider ways to expand jurisdiction of State Bar to address UPL violations
- Protect clients who come forward to report problems (e.g., allow third party complaints and fictitious name complaints)
- Create and publicize a UPL registry to assist consumers in finding qualified assistance
- Create and publicize an immigration provider referral information on State Bar or other local bar association websites
- Explore other models for protecting vulnerable communities (e.g., Elder Abuse unit in San Francisco D.A.'s Office; Victim Witness/Assistance programs, etc.)
- Create and support the development of a pipeline of individuals interested in practicing immigration law
- Provide funding to compile and analyze data regarding service providers and to identify where fraud occurs
- Track referrals and outcomes
- Clarify referral structure – should number of entities responsible for prosecution be narrowed and identified?

NEXT STEPS

As discussed at the Summit, next steps include engaging law enforcement in a dialogue about effective partnership in the investigation and prosecution of UPL matters. To that end, a meeting between the State Bar and the California District Attorneys' Association is set for June 29th. This law enforcement-focused meeting will be followed by a joint convening of representatives from immigration legal services and law enforcement agencies.

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