

APPENDIX D

Unauthorized Practice of Law, Notario, and Immigration Attorney Related Complaints

The statutes governing the contents of the Annual Discipline Report identify certain types of non-attorney complaint data for inclusion. This Appendix is designed to provide additional data regarding the Unauthorized Practice of Law (UPL), notario, and immigration-related attorney discipline system activity. The State Bar is committed to addressing the unauthorized practice of law as a part of its public protection mission.

UNAUTHORIZED PRACTICE OF LAW GENERALLY

Section 6125 provides that: “No person shall practice law in California unless the person is an active member of the State Bar.” Section 22440 makes it unlawful for any person, other than a person authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in business or act in the capacity of an immigration consultant, except as provided by sections 22440 through 22449 of the code.

A non-attorney could be someone who has never been an attorney, someone who was a licensed attorney and was disbarred or resigned, or is an attorney licensed in another state, but not in California. Complaints regarding these types of respondents are referred to as UPL.

The Business and Professions Code does not define the “practice of law.” However, California courts have defined it to include:⁴⁷

- Performing services in court cases/litigation;
- Providing legal advice and counsel; and
- Preparing legal instruments and contracts that secure legal rights – even if the matters involved do not have anything to do with lawsuits or the courts.

IMMIGRATION ATTORNEY MISCONDUCT

Attorneys must comply with the Rules of Professional Conduct and the State Bar Act and are subject to discipline for violating the law. This includes violating section 6157.5 (advertising of legal services related to immigration services not including a statement the provider is an active member of the State Bar), section 6242 (demanding/accepting advance fees for Immigration Reform Act services), and section 6103.7 (threatening to report immigration status of party or witness or his or her family member in employment dispute).

UNAUTHORIZED PRACTICE OF LAW: NOTARIO

Business and Professions Code section 6126.7, subdivision (a), prohibits any person who is not an attorney from literally translating from English into another language in any document or

⁴⁷ *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (1922)

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advertisement any words, including notary, that imply that the person is an attorney. Violation of this prohibition is generally referred to as a *notario* matter, which is a type of UPL.

The legal authority for prosecuting those engaged in the unlicensed practice of law is found in several sections of the Business and Professions Code; as reflected in Table D2, the State Bar's avenues for addressing non-attorney misconduct represent a limited subset of the broader array of available remedies.

Table D1 provides information about UPL and immigration-related complaints received in 2018, as well as the number of active cases in both categories.

Table D1. 2018 UPL and Immigration-Related Complaints

Immigration-related Attorney Complaints Received	489
<u>Current Status of Active Immigration Attorney Complaints*</u>	
Cases in Intake	4
Cases in Enforcement	
Investigation	192
Pre-Filing	36
Post-Filing	<u>33</u>
Total Active Cases	265
Non-Attorney (NA) Complaints Received	734
State-Bar Initiated Complaints re NA	109
Cease and Desist/Notice of Violation Letters Issued	121
Petits. to Assume Jurisdiction Pursuant to Section 6126.3	6
<u>Current Status of Active NA Complaints*</u>	
Cases in Intake	56
Cases in Enforcement	
Investigation	332
Filed in Superior Court	<u>20</u>
Total Active Cases	408
Immigration-related NA Complaints Received ⁴⁸	147
State-Bar Initiated Complaints re NA	26
Cease and Desist/Notice of Violation Letters Issued	27
Petits. to Assume Jurisdiction Pursuant to Section 6126.3	4
<u>Current Status of Active Immigration-related NA Complaints*</u>	
Cases in Intake	5
Cases in Enforcement	
Investigation	57
Filed in Superior Court	<u>7</u>
Total Active Cases	69

*As of February 2019

⁴⁸ Immigration-related NA complaints are a subset of NA complaints.

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OUTREACH AND EDUCATION EFFORTS

In 2017, the State Bar's outreach and education activities were again geared toward immigrant populations most vulnerable to UPL, notario, and immigration attorney related misconduct, and included participation in the following activities:

- Immigration Seminar co-sponsored by the San Diego District Attorney's office and Talamantes Immigration Law Firm;
- National Conference of Vietnamese Attorneys; and
- Cabrera Victims Assistance Workshop.⁴⁹

In March, OCTC spoke with detainees at the Immigration and Customs Enforcement Processing Center in Adelanto about their experiences with attorneys and non-attorneys who assisted them with their immigration matters, and provided attorney and non-attorney complaint forms in six languages. OCTC also provided educational posters and flyers for posting in the Adelanto detainee dormitories with information about immigration fraud.

ONGOING ACTIVITIES

OCTC participates in state and nationwide efforts to protect the immigrant community.

- Nationwide activities:
 - Quarterly UPL teleconference coordinated by the Federal Trade Commission; and
 - Monthly teleconferences with federal attorney discipline authorities who field complaints about alleged misconduct in Immigration Court and other federal jurisdictions.
- Statewide activities:
 - Workshops and meetings with city attorneys' offices and the Attorney General's Office related to notario fraud and Immigration fraud-prevention; notice about the right to report a complaint, which is required in all contracts for immigration services pursuant to section 6243;
 - Ongoing media outreach to educate the public about UPL by non-attorneys, awareness of potential immigration-related fraud, and how to file complaints with the State Bar. The State Bar's Office of Communications works with Spanish language television, print and web-based media, and uses its active social media presence in these efforts.
 - The State Bar website provides UPL complaint forms in English, Spanish, Chinese, Korean, Russian, and Vietnamese. Additionally, the State Bar's Call Center has two Spanish speakers on staff and has on-demand access to interpretation in over 200 languages.

⁴⁹ This workshop was organized by the Department of Consumer & Business Affairs to assist the victims of Oswaldo Cabrera, a non-attorney successfully prosecuted for unauthorized practice of law by the California Attorney General's Office.

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BACKGROUND AND STATUTORY FRAMEWORK

Table D2. Statutory Authority for UPL Prosecution

Legal Authority	Who Prosecutes	Remedies
Section 6030	State Bar initiates civil action	Provides for injunction where there has been a violation or threatened violation of the UPL statutes.
Section 6126, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	District Attorney/ Attorney General/ City Attorney	Misdemeanor – Up to 1 year County Jail and/or fine of up to \$1,000 for first offense. For second offense, minimum of 90 days County Jail, except where the interests of justice would be served by a lesser sentence or a fine.
Section 6126, subdivision (b) (attorneys who have been disbarred, suspended, involuntarily enrolled as inactive, or who resigned with charged pending)	District Attorney/ Attorney General/ City Attorney	May be charged as a misdemeanor or a felony. If misdemeanor, up to 6 months County Jail; if felony 16mos/2 or 3 years State Prison.
Section 6126.3, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	State Bar or Superior Court initiates civil proceedings	In addition to any criminal proceedings pursuant to Section 6126, or any contempt proceedings pursuant to Section 6127, the court has jurisdiction for a civil action under this section when a person engages in UPL or holds him or herself out as an attorney.
Section 6126.3, subdivision (b) (same as 6126.3(a))	State Bar or Superior Court	Section 6126.3 (b) provides that the State Bar, or the Court on its own motion, may make an application to the superior court for the county where the person maintains or has recently maintained his or her principal office for the practice of law or where he or she resided, for assumption by the court of jurisdiction over their practice. The State Bar may intervene and assume primary responsibility for conducting the action.
Section 6126.4 (makes 6126.3 applicable to immigration consultants pursuant to Chapter 19.5 (commencing with Section 22440) who hold themselves out as practicing or entitled to practice law)	State Bar or Superior Court initiates civil proceedings	Assume jurisdiction over practice as per 6126.3.
Section 6126.5 (relief available in the enforcement actions)	District Attorney/ Attorney General/ City Attorney	Court may award relief for any person who obtained services offered or provided in violation of 6125 or 6126 including damages, restitution, penalties, reasonable attorneys' fees to rectify errors made in the UPL, prejudgment interest and appropriate equitable relief.

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Legal Authority	Who Prosecutes	Remedies
Section 6126.7, subdivision (a) (forbids a non-attorney from use of words such as “notario” in advertising, letterhead, etc.)	State Bar	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 6127 (contempt of court for acting as an officer of the court without authority or advertising as such without being a member of the State Bar)	Not specified so State Bar can bring	Order re contempt.
Section 22442.3 (Forbids use, with the intent to mislead, of words such as “notario” in advertising, letterhead, etc. by an immigration consultant)	Injured party or District Attorney/ Attorney General/ City Attorney	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 22445	Injured party or District Attorney/ Attorney General/ City Attorney	Civil penalties not to exceed \$100,000 for each violation of this chapter that regulates activities of immigration consultants.

STATE BAR’S ADVANCEMENT OF THESE REMEDIES

The vast majority of all cases are initiated by complaints from the public. In addition, however, OCTC can independently generate a case pursuant to its ongoing monitoring of Spanish-language print and radio ads for use of the word *notario*. In 2018, there were 109 State Bar initiated non-attorney inquiries opened.

Complaints are reviewed by OCTC staff, which conducts preliminary investigation, including identifying the internet advertising used by the respondent. In many cases, OCTC also contacts the complainant to get more details, and sometimes contacts the respondent for additional information. If a complaint sufficiently alleges a UPL violation, the matter is assigned to OCTC’s NA/UPL team for further investigation. Investigation activity may involve additional internet searches, Secretary of State filings research, field visits, and, as needed, follow up with the complainant and respondent. Any combination of the following activities may ensue from this additional investigatory period:

CEASE AND DESIST LETTER

If the investigation determines that the complaint involves an isolated instance, staff may send a “Cease and Desist” (CND) letter to the respondent.

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The CND letter serves as a warning, putting the respondent on notice that certain services/actions may violate the law and constitute UPL. Excerpts of the CND letters for both UPL and notario matters are provided below. All of these matters are now posted on the State Bar's website at:

<http://www.calbar.ca.gov/About-Us/News-Events/California-Bar-Journal/Attorney-Discipline/UPL-Cease-and-Desist-Notices/category/upl-cess-and-desist-notices>:

NOTICE: (UPL)

You are hereby on notice that, based upon our investigation and your actions described above, it is the opinion of the State Bar Office of Chief Trial Counsel ("OCTC") that you have engaged in the unauthorized practice of law.

You should immediately **CEASE AND DESIST** engaging in the unauthorized practice of law. If the State Bar of California receives additional information that, despite this notice, you continue to engage in violation of the above laws, the State Bar may take any appropriate action to ensure your compliance with these laws and to protect the public.

NOTICE: (Notario)

You are hereby on notice that, based upon our investigation, it is the opinion of the State Bar Office of Chief Trial Counsel ("OCTC") that you have used words or phrases which imply that you are an attorney or that you may give legal advice or provide legal services or that you are otherwise entitled to practice law in California.

You should immediately **CEASE AND DESIST** from using such words or phrases in any documents, including, but not limited to any advertisements, stationery, letterhead, business cards, or other comparable written materials. If the State Bar of California receives additional information that, despite this notice, you continue to engage in violation of Business and Professions Code section 6126.7, the State Bar may take any appropriate action to ensure your compliance with the law and to protect the public.

ASSUMPTION OF JURISDICTION

Where there is sufficient evidence to conclude that an individual has engaged in UPL and the interest of clients or interested persons will be prejudiced, the State Bar may make application to the superior court, pursuant to section 6126.3, for the assumption of jurisdiction over the practice by the superior court. If the superior court grants the application and makes an order assuming jurisdiction, the State Bar acts under direction of the superior court to wind down the practice. These proceedings are typically filed on an ex parte basis in an attempt to prevent the destruction of files or other evidence. In such cases, OCTC is required to give notice unless there is good cause to believe that harm would result (e.g., client property or other evidence would

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be destroyed) from the provision of notice. Table SR-9 of the Report provides information on section 6126.3 filings (referred to as petitions to terminate) for the last four years.

LAW ENFORCEMENT REFERRALS

Historically, OCTC referred UPL cases to law enforcement only after a complete investigation has been done; beginning in 2016, OCTC began making referrals concurrent with ongoing investigations, in an effort to expedite the criminal investigation of these matters. The State Bar routinely refers matters to law enforcement agencies for prosecution. In 2018, the State Bar made 492 law enforcement referrals based on 734 individual complaints.