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Immigration Consultant Fraud: Laws and Resources

by Katherine Brady¹

INTRODUCTION AND OVERVIEW

The purpose of this manual is to assist District Attorneys, U.S. Attorneys and others in prosecuting persons who offer bogus services to immigrants with the promise of obtaining immigration benefits. The manual discusses in detail a California state law, significantly strengthened in 1995, that provides criminal and civil sanctions specifically for violations by immigration consultants.² This law not only punishes misrepresentation, but provides civil and/or criminal sanctions for failure to perform affirmative duties such as post a \$50,000 bond, provide specific written notices, keep copies of client records, etc. A violation of the immigration consultant law is an unlawful business practice for purposes of Bus. & Prof. Code § 17200. Most sections of the law apply to employees of non-profit agencies as well as for-profit consultants.

The manual also discusses other laws applicable to immigration fraud, such as state theft and unfair competition laws³ and federal laws prohibiting mail fraud, theft, and conspiracy to commit immigration fraud.⁴

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² Calif. Bus. & Prof Code §22440-22447. Enacted 1987, amended 1997 effective January 1, 1998. Certain sections of the code are subject to automatic repeal on January 1, 2002 unless extended by law.

³ See discussion in Part Two of Calif. B&P Code §17200 regarding unfair competition and section 17500 regarding false or misleading advertising; Calif. Penal Code §653.55 regarding the making of false or misleading statements in immigration matters; and Calif. Penal Code §487 regarding theft.

⁴ See, e.g., 18 U.S.C. §1546 regarding fraud and misuse of visas, permits and other documents, 18 U.S.C. section 1001, perjury to a federal official. Consultants and attorneys who encourage aliens to commit fraud can be convicted of conspiracy to commit these offenses. See discussion in Part Four.

Extent of The Problem

Community agencies have long been aware of widespread misrepresentation and theft involving immigration consultants. The problem has increased dramatically in the last few years, partly because the immigrant population has become a more desperate prey. Immigrants always have been a population vulnerable to fraud, but recent anti-immigrant sentiment and legislation, including the passage of Proposition 187, have caused panic among documented and undocumented immigrants. Undocumented persons are desperate to become lawful permanent residents. Lawful permanent residents are applying in record numbers to become U.S. citizens. For example, the number of citizenship applications filed in 1995 doubled the number filed in 1994, and more than tripled the level of recent years.⁵ Citizens, in turn, are anxious to legalize their close relatives.

Victims of immigration fraud suffer serious consequences. Most of the victims are poor and may lose their life savings. They may turn over irreplaceable original documents to the consultant, never to see them again. Perhaps most important, the victim's immigration status can be permanently destroyed or damaged. The victim may forfeit his place on the years-long INS waiting list for immigration through family members, or lose all rights to apply for relief. Hundreds of immigrants in California permanently lost the right to become permanent residents in the amnesty programs of the late 1980's because fraudulent immigration consultants pocketed their application fees and never filed the applications. Unscrupulous consultants write down false political asylum stories without the clients' knowledge, which destroys the credibility of applicants who do have a strong asylum claim; charge money for non-existent "amnesty" programs or for immigration programs that exist but do not apply to the clients; and persuade unsophisticated clients to commit fraud by telling them that this is how it is done in America.

Victims range from the undocumented -- who are especially afraid to complain about the abuse -- to U.S. citizens who believe that they are taking steps to become lawfully reunited with a parent, spouse or child. Many are hard-working individuals who simply cannot afford an attorney. Regardless of immigration status, these victims have a right to protection against fraud.

Challenges to Prosecution; Solutions and Resources

District Attorney offices in several counties have actively prosecuted this type of crime. In others, the D.A. has failed to prosecute dishonest providers even when community groups have provided detailed information about ongoing fraud.

The following are some of the challenges to prosecution and suggestions for meeting them.

- 1) Some D.A. Consumer Protection Units are not aware of the extent of this type of crime or the existence of California laws governing immigration consultants. Moreover, they are hesitant to deal with the problem because they lack technical knowledge about immigration law.

This manual provides information about immigration fraud and applicable laws. As important, it provides names and telephone numbers of public interest law centers and other organizations who are expert in immigration law and eager to work with D.A. Consumer Protection offices. See Part Four, Resources.

For example, in recent cases attorneys and community agencies have provided Consumer Protection Units with translations of written documents, contacts with victims who will set

⁵ "Meeting the Challenge," Citizenship U.S.A., Immigration and Naturalization Service.

up "sting" meetings with perpetrators, contacts with INS officers, background information on known fraudulent providers who operate statewide, memoranda on the immigration law and procedure at issue, expert testimony and declarations, and other services. Some attorneys have co-counseled civil prosecutions with Consumer Protection Unit staff.

- 2) Ethnic communities are the prime targets for this activity. While Consumer Protection Units are committed to serving ethnic populations, they may have limited knowledge of some populations and few staff with foreign language capabilities.

Immigration misrepresentation is the most widespread consumer crime problem plaguing ethnic neighborhoods. Citizens and non-citizens are affected. Community groups, immigrant hotlines, and others can provide interpreters, information and other assistance to help their communities. See Part Four, Resources.

- 3) Because the victims often are poor people, the amounts of money collected from each person only constitute misdemeanor theft convictions. The D.A.'s office is pressured to concentrate on felony convictions.

Amounts of money defrauded from victims can be aggregated to constitute a basis for grand theft under Calif. P.C. §487. Moreover, many immigrant and ethnic communities are well organized and have working relations with city officials. They may be able to provide political support for the prosecution despite the fact that the victims are low income.

While an immigration consultant's subsequent violations for using and posting misleading information, and failing to inform the Secretary of State of business information changes⁶ imposes only misdemeanor criminal punishment, criminal and civil fines can be relatively high -- up to \$10,000 per violation. These misdemeanor crimes, many of which do not require proof of intent, can be charged alone or in conjunction with felony theft or unfair competition. The law imposes felony punishment for subsequent violations of all other provisions, such as the failure to provide written contracts or failure to post a \$50,000 bond with the Secretary of State.⁷

Civil suit for penalties and injunctive relief are the best option in some situations. The law provides for restitution and treble damages to the victims and fines paid to the county.

Violation of the California consultant law can be a basis for action under other laws prohibiting unfair competition, such as Calif. Bus. & Prof. Code §17200.

Since many of these acts constitute federal felonies, the D.A.'s office may work in conjunction with the U.S. Attorney's office.

This manual is divided into four parts.

- * **Part One discusses the California "Immigration Consultant" law, Calif. B&P §22440 et seq.** (misdemeanor penalties as well as injunctive relief and civil fines for misrepresentation, failure to provide certain information to clients or to post a bond, etc.).
- * **Part Two discusses other applicable California laws,** such as false or misleading statements in preparing an immigration matter under Calif. P.C. §653.55 (misdemeanor

⁶ See Calif. B&P Code §22445(c)

⁷ See Calif. B&P Code § 22445(c).

penalties, civil and injunctive relief), petty and grand theft (misdemeanor/felony), unfair competition under B&P §17200 (civil penalties), false or misleading advertising under Calif. B&P §17500 et seq. (misdemeanor, civil penalties).

- * **Part Three discusses applicable federal laws.**
- * **Part Four provides Resources**, including how to contact and work with coalitions, the private immigration bar, and public interest firms, and a bibliography on immigration law.

Examples in the text generally are based on unlawful actions that have occurred in California in the last year.

Appendices provide copies of the penal and civil laws discussed above, sample flyers advertising fraudulent schemes and press releases showing prosecution, examples of literature distributed by fraudulent providers, and an account by a District Attorney of a prosecution and community education that followed.

PART ONE: THE CALIFORNIA "IMMIGRATION CONSULTANT" LAW

Summary. Section 22440 et seq. of California Business and Professions Code governs non-lawyers who offer non-legal assistance in immigration matters in California ("immigration consultants"). The law punishes general misrepresentation and using foreign translations such as "Notario Publico" with the intent to create the impression that the consultant is a lawyer, as well as several offenses that do not require intent such as failure to post and provide certain written warnings and information, provide a written contract to each client, post a \$50,000 bond with the Secretary of State, return clients' original documents, keep copies of documents submitted, etc. Many of the offenses incur criminal penalties, with first violation a misdemeanor and second a felony. Civil penalties and awards range from up to \$2,000 to up to \$10,000 per offense or treble damages. Injunctive relief, including fines for failure to obey an injunction, is available. Two requirements -- the requirement to post a \$50,000 bond and to provide each client with a contract -- do not apply to employees of non-profit, tax-exempt groups that charge low fees. A copy of Bus. & Prof. Code §§ 22440 et seq. is attached as **Appendix I**.

I. Who Is an "Immigration Consultant" Governed by Calif. B & P Code §§22440 et seq.? What is an "Accredited Representative"?

An immigration consultant does not necessarily practice with an office, business suit, and plaques on the wall. The practice can take many forms and the setting can be anywhere from an office to a church to meetings at the clients' home or workplace. Some fraudulent consultants have rented hotel conference rooms for one-day visits to a city, advertising the coming visit by distributing flyers in ethnic neighborhoods. See sample flyers in **Appendix II**.

Section 22441(a) of the California Business and Professions Code defines an immigration consultant as a non-lawyer⁸ who provides "nonlegal" assistance or advice on an immigration matter. Nonlegal assistance includes, but is not limited to,

- * completing federal or state forms "but not advising persons as to their answers on those forms";
- * translating answers to questions posed on those forms;
- * helping clients obtain the supporting documents, such as birth certificate, necessary to complete forms;

⁸ If a person is licensed to practice law in any state in the United States, s/he is not subject to the consultant laws.

- * submitting completed forms to the INS; and
- * making referrals to persons who can provide legal representation.

Non-profit status is not a guarantee of legitimate practice. Some large-scale immigration fraud has been committed by corrupt employees of legitimate non-profit agencies. Some unscrupulous providers have cynically incorporated themselves as non-profits. Non-profit staff can be prosecuted under all of the laws discussed in this manual except, in some cases, selected sections of the California immigration consultant law discussed here.

A person working under the direct supervision of a lawyer as his or her assistant probably would not be found to be an immigration consultant subject to the California immigration consultant law discussed here. The assistant can be prosecuted under general state and federal statutes (see Parts Two and Three), and the lawyer is subject to those laws as well as discipline by the state bar association.

Accredited Representatives. The California consultant law provides that it is unlawful for an immigration consultant to provide "legal" advice.⁹ Federal law, however, provides that certain non-profit agency employees who have been formally designated "accredited representatives" by the Board of Immigration Appeals (BIA) are permitted to provide legal advice and representation in immigration proceedings.¹⁰ An accredited representative can be licensed at level one (to represent persons in administrative applications to the INS) and level 2 (to represent persons in hearings before an immigration judge, and in appeals to the BIA.) Because accredited representatives go through an investigation and approval procedure, there often is less chance that they commit fraud -- although there have been recent cases in California where that happened. A crooked accredited representative is liable under most of the provisions of the laws discussed below, but not for simply giving legal advice.

II. REQUIREMENTS UNDER CALIF. B&P §§22440 ET SEQ. THAT APPLY TO ALL IMMIGRATION CONSULTANTS

The requirements under the California Business and Professions Code discussed in this section apply to all consultants, whether they work with a non-profit or for-profit group.

Two additional requirements -- the requirement to provide each client with a written contract and to post a \$50,000 bond with the Secretary of State -- apply to all consultants except employees of certain non-profit tax-exempt corporations. These requirements are discussed in Section III below.

A. Provide Posted Notices and Written Statements

Before offering services, all immigration consultants must "conspicuously display" in their office certain notices in English and the language of their clientele. The notice must be at least 12 by 20 inches. The writing must be boldface type or print, and each character at least one inch in height and width. The notice must:

- State the full name and address of the consultant;
- Provide evidence of compliance with bonding requirements, including the bond number, if the consultant is required to post the \$50,000 bond or any other bond; and

⁹ See Calif. B&P Code §22441(a), (d).

¹⁰ See 8 CFR §292.

-- State that the consultant is not an attorney¹¹

The consultant also must post a conspicuous sign stating that he or she may not accept a fee for referring the client to another for services that the consultant cannot or will not perform.¹²

In addition the consultant must provide each client with a **written statement** providing the immigration consultant's name, address, telephone number, agent for service of process, and evidence of compliance with the bond requirement.¹³

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief; no criminal penalty. Second violation is also a misdemeanor.¹⁴ See section IV, *infra*.

B. Do Not Use "Notario" or Other Misleading Translations

An immigration consultant may not, with specific intent, use any language that when literally translated would imply that the consultant is an attorney. For example, "notary public" when translated literally into Spanish is "notario publico," which in many Latin American countries indicates the person is an attorney. "Licensed" can be translated into Spanish as the title "Licenciado," which also implies that the person is a lawyer. "Abogado" or "abogada" is also prohibited for nonlawyers. This rule applies to any document, stationery, advertising, letterhead, business card or any other business related written material.¹⁵

Example: Juan provides assistance with completing immigration forms. He is a licensed notary public. He violates this section when, with the intent to create the impression that he is a lawyer, his business cards are printed "Lic. Juan Gomez" or he has a sign outside his office reading "Notario Publico."

Persons are permitted to advertise in English. Juan can have a sign in English reading "Notary Public," but he can charge only \$10.00 for each act he performs as a notary public and \$10.00 for each "adjustment of status" application he completes.¹⁶ **Penalty:** In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief; no criminal penalty. Second violation is also a misdemeanor.¹⁷ See section IV, *infra*.

¹¹ Calif. B&P Code §22442.2(a).

¹² Calif. B&P Code §22444(d). The substantive requirement is discussed in Section III, Part G.

¹³ Calif. B&P §22442.2(b). While subsection (b) is silent as to required languages, subsection (a) requires warnings to be given in English and the language of the clientele.

¹⁴ Calif. B & P §22445(c)

¹⁵ Calif. B&P Code §22442.3.

¹⁶ The notarization fee of \$10 is set by the secretary of state, and the "adjustment of status" \$10 fee is set by Government Code §82. Adjustment of Status is an immigration procedure whereby a person acquires permanent residency or some other status from an INS office in the United States. See INA §245(a), (i), 8 USC §255(a)(i).

¹⁷ Calif. B & P §22445(c)

C. Give Client Copies of All Documents Submitted on Their Behalf

The immigration consultant must give the client a copy of any document that he/she has completed for the client.¹⁸

Example: Carmen completes an I-130 family visa petition, with supporting documentation, for her client. Carmen must give the client a photocopy of the entire application.

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*.

D. Retain For Three Years Copies of Clients' Documents and Forms

An immigration consultant must retain copies of all forms and documents of a client for at least three years from the date of the last service performed for the client.¹⁹

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*.

E. Must Not Keep Client's Original Documents

An immigration consultant may not retain in his/her possession any original documents belonging to the client.²⁰

Example: When the client gives Carmen her marriage certificate in support of the I-130 family visa petition, Carmen should make photocopies of the certificate for her files and for submission to the INS, and return the original to the client.²¹

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*.

F. Misrepresentation, Oral Guarantees, Influence with INS

It is unlawful for an immigration consultant to do any of the following:

-- Make any false or misleading statements to a client;

¹⁸ Calif. B&P Code §22443 (a).

¹⁹ Calif. B&P Code §22443(b).

²⁰ Calif. B&P Code §22443(c).

²¹ Federal regulation permits an applicant to submit photocopies to the INS without formal certification as a copy. The applicants' signature on the application form is considered a certification that copies are true and correct. Examples are applications for naturalization to U.S. citizenship, administrative application for asylum, adjustment of status, visa petition, or registry. The applicant must formally certify copies of applications before an immigration judge of the Board of Immigration Appeals. 8 CFR §103.2(b)(4), (b)(5).

-- Make any guarantees or promises to a client, unless the statement is in writing and is based on factual information;

Example: John tells his client, "I'll get you your employment authorization within xx number of days." He must write down this guarantee. Also, it must be based on factual information. An applicant for adjustment of status might be guaranteed work authorization on a certain date, but a political asylum applicant could not be.

Example: Jorge presents a "seminar" in which he states that people who work as carpenters and dishwashers can immigrate immediately through their employment. After the seminar he signs up several clients for the application. He violated the section because (a) he did not write down the guarantee and (b) the guarantee is not based on factual information, because carpenters and dishwashers cannot immigrate through their employment.

-- Make any statement conveying that the consultant can obtain special favors from the INS or has some special influence with the INS.²²

Example: Martin cannot place on his business card, "Former Employee of INS," since this implies that he has connections with INS. Nor can he call his business "Servicio de Inmigracion," which is Spanish for Immigration Service.

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*. Note: a violation of this section also may constitute a violation of other California laws prohibiting theft or misrepresentation. See discussion in Part Two.

G. Cannot Charge a Fee for a Referral

An immigration consultant cannot charge "a fee for referral of the client to another for services that the consultant cannot or will not perform." As discussed in Section III-B, above, a notice stating this must be conspicuously displayed in the office.²³

Example: Tong has a relationship with a private attorney, to whom he refers complex cases. Tong cannot charge a client for making this referral.

H. Must Notify Office of the Secretary of State within 30 Days of Change of Address or Other Changes.

An immigration consultant must notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.²⁴

²² Calif. B&P Code §22444(a), (b), (c).

²³ Calif. B&P Code §22444(d).

²⁴ Calif. B&P Code §22442.4.

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief; no criminal penalty. Second violation is also a misdemeanor.²⁵ See section IV, *infra*.

III. THE \$50,000 BOND AND THE CLIENT CONTRACT: Requirements That Apply to All For-Profit and Some Non-Profit Consultants

The following two requirements apply to all immigration consultants except those who work for a tax-exempt, non-profit agency that charges fees commensurate with what the INS permitted QDE's to charge. For further description of exempt agencies, see discussion in section C below.

A. \$50,000 Bond

Before providing services as an immigration consultant, a consultant to whom this requirement applies must file a bond of \$50,000 (fifty thousand dollars) with the California Secretary of State. The bond must be executed by a corporate surety qualified to do business in California and conditioned upon compliance with the immigration consultant Business and Professions code sections.²⁶ The required form is attached as **Appendix V**.

The bond is payable to the State of California. It will be used to benefit a client if the client is found to have been damaged by "fraud, misstatements, misrepresentation, unlawful act(s) or omission to act, or failure to provide the services of the immigration consultant or the agents, representative, or employees of the immigration consultant while acting within the scope that employment or agency."²⁷

The consultant must notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.²⁸

If the consultant is sued and ordered to pay damages, the damages can be recovered from the \$50,000 bond. If this causes the bond to be rescinded or reduced below the \$50,000 minimum, the consultant may not resume practice until the bond has been repaid or reinstated.²⁹

Instead of posting a bond, the consultant may make a cash deposit as set forth in Calif. Code of Civil Procedure § 995.710. In that case, the victim seeking benefit will present a court order awarding a money judgement along with other proof to the Secretary of State.³⁰ The Secretary of State may retain the

²⁵ Calif. B&P 22445(c)

²⁶ Calif B&P Code §22443.1(a).

²⁷ Calif. B&P Code §22443.1.

²⁸ Calif. B&P Code §22442.4.

²⁹ Calif. B&P Code §22447. This section is subject to repeal on January 1, 2002 unless extended by law.

³⁰ Calif. B&P Code §22443.1(e). Under Calif. B&P Code, 22443.1(g), the Secretary of State will approve and pay claims in accordance with Civil Code §1812.105(b)-(e).

cash deposit for two years from the date the payer of the deposit has stopped working as an immigration consultant, unless a municipal or superior court judge orders earlier return of the money.³¹

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*.

How to Find Out if an Immigrant Consultant is Bonded

There are two ways to check whether an immigrant consultant has posted a surety bond to the secretary of state.

- By phone. Call the Secretary of State's Trademarks and Special Filings Agency at (916) 653-4984. The call will be answered by an official who can verify whether the consultant has posted a bond. You will need to give the official the name of the immigration consultant, the name of business, and, if possible, the surety bond number.
- By internet. You can find out whether the immigration consultant has posted a surety bond by searching on the Secretary of State's web site at: http://www.ss.ca.gov/business/sf/bond_search.htm. The page allows you to search by the consultant's name or business' name.

B. Provide a Written Contract to Each Client

Before providing any services to a client, the for-profit consultant must draw up a written contract. The contract must be in English as well as the client's language. It must include:

- The services to be performed;
- The cost of those services;
- A 10-point bold type conspicuous statement stating that the consultant is not an attorney and cannot act in the capacity of an attorney;
- A conspicuous statement that the client has the right to rescind the contract within 72 hours.³²

The contract must not contain:

- Any guarantees or promises, unless based on some factual information;
- Any statement that the immigration consultant can obtain any special favors from the INS or has some special influence with the INS.

³¹ Calif. B&P Code §22443.1(f).

³² Calif. B&P Code §22442.

Example: The contract must not guarantee that the client will obtain work authorization, asylum or a green card. Rather it should state that the consultant will assist the client to prepare and file the application. The contract (as well as business cards or any other material) should not include statements such as "Formerly with the INS."

Penalty: In civil action, subject to penalty up to \$10,000, the greater of treble damages or \$1,000, attorneys' fees, injunctive relief. Misdemeanor up to one year in jail and/or up to \$10,000 fine; second offense is a felony. See section IV, *infra*.

C. Which Non-Profit Agencies Are Not Required Under This Law to Post a \$50,000 Bond Or Provide Each Client with a Contract?

The requirements to post a \$50,000 bond and provide each client with a contract do not apply to employees of non-profit, tax-exempt corporations who help clients for free or "for a fee, including reasonable costs, consistent with that authorized by the Immigration and Naturalization Service for qualified designated entities, complete application forms in an immigration matter."³³

Note that the organization must both be a non-profit corporation under the law of California or some other state, and designated by the Internal Revenue Service as a tax-exempt charitable organization. Some agencies (including some fraudulent consultants) have registered as non-profits, but have not applied for or been granted federal tax-exempt status. They remain subject to the \$50,000 bond/client contract requirement.

Qualified Designated Entities ("QDE's"). Qualified Designated Entities are non-profit agencies that were authorized to perform special services during the amnesty programs of the late 1980's on the condition that, among other things, they charge very low fees.

IV. PENALTIES FOR FAILURE TO COMPLY

Civil Penalties. The injured party can bring a civil suit against an immigration consultant, who is liable to pay a penalty of up to \$10,000 for each violation.³⁴ This penalty applies to all violations in this section. A second violation of failing to post a notice, making misleading literal translations, or failing to notify secretary of state of change of address³⁵ also constitutes a misdemeanor and warrants no criminal punishment.³⁶

Suit for Damages or Injunction. Under another provision, the injured party can bring a civil suit for injunctive relief and/or damages. In this suit, the court can award the injured party actual damages plus an amount equal to three times the amount of actual damages, or \$1,000 per violation, whichever is greater. The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.³⁷ Thus if the consultant

³³ Calif. B&P Code §22442(g); see also §22443.1(h).

³⁴ Calif. B&P §22445(a).

³⁵ Calif. B&P §§22442.2, 22442.4, 22442.4

³⁶ Calif. B&P §22445(c)

³⁷ Calif. B&P §22446.5.

defrauded the plaintiff of \$3,000, the person could receive \$12,000 plus attorneys' fees and costs. In addition, *any person or organization* who "upon information and belief" claims that a consultant has violated this law can bring a civil action for injunctive relief. The prevailing plaintiff will recover reasonable attorneys' fees and costs.³⁸ (Private suit, not D.A.??)

Speedy Trial. The statute provides that an action "brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law."³⁹

Damages can be recovered from the \$50,000 immigration consultant bond, if one was posted. See Section III, *supra*. If this causes the bond to be rescinded or reduced below the \$50,000 minimum, the consultant may not resume practice until the bond has been repaid or reinstated.⁴⁰

Criminal Penalties. First violation of this law is a misdemeanor punishable by a fine of from \$2,000 to \$10,000 per offenses, or imprisonment in county jail for not more than one year. A second violation is a felony punishable by imprisonment in state prison.⁴¹ Payment of restitution to a victim will take precedence over payment of the criminal fine.⁴²

The criminal penalties do not apply to the following violations: failing to post a notice, making misleading literal translations, or failing to notify secretary of state of change of address⁴³ (discussed in sections A, B and H in section II, *supra*).

PART TWO: OTHER APPLICABLE STATE LAWS

Because Offices of the District Attorney Consumer Protection Units are familiar with some of the offenses discussed below, this section will provide only a basic summary of those sections and emphasize specific examples of violations relating to immigration consultants.

I. **False or Misleading Statements in Preparing Immigration Matters Under Calif. Penal Code §§ 653.55 et seq.**

Definition of the Offense: Section 653.55 of the California Penal Code provides:

It is a misdemeanor for any person for compensation to knowingly make a false or misleading material statement or assertion of fact in the preparation of an immigration matter which statement or assertion is detrimentally relied upon by another.

³⁸ Calif. B&P §22446.5(b).

³⁹ Calif. B&P §22446.5(c).

⁴⁰ Calif. B&P §22447.

⁴¹ Calif. B&P §22445(c)

⁴² Calif. B&P §22445(b).

⁴³ Calif. B&P §22445(b).

The offense is broadly defined to encompass virtually any immigration or naturalization work done by a person or entity in exchange for anything of value.⁴⁴

Examples of Violations Committed by an Immigration Consultant

A few examples of false or misleading material statements that unscrupulous consultants might knowingly make include: misrepresenting what the immigration law is, what results the consultant can provide, or what the consultant has written on the victim's immigration application form⁴⁵; grossly misrepresenting the complexity of an application, in order to justify an exorbitant fee⁴⁶; collecting application fees to submit to the government and instead pocketing all or part of the fees, etc.

Examples of the victim's "detrimental reliance" might include:

- * paying the consultant's fee;
- * losing the application fee paid to the INS because the application was denied for lack of eligibility or poor preparation;
- * wasting the INS fee because the application, even if approved, would not help the person in the way the consultant promised;
- * facing immigration consequences such as delay, the need to file an appeal or motion to reopen, or deportation because of having submitted a deficient or fraudulent application to the INS.

Remedies, Penalties, Procedure:

Criminal Penalties: This offense is punishable as a misdemeanor by six months imprisonment and/or a fine not to exceed \$2,500.⁴⁷

Civil Relief. Local governments and state or county prosecutors can bring civil suit against the consultant for violating the section. The action may be brought upon the complaint of any person acting for "the interests of itself, or members, or the general public." Each civil violation is punishable by a fine of up to \$2,500. The statute specifies which public entity will receive the penalty fees, depending upon what

⁴⁴ Under Calif. P.C. §653.56, "compensation" includes "money, property, or anything else of value." "Immigration matter" is defined to include any proceeding, filing or action affecting immigration or citizenship status arising under immigration laws. "Person" means an individual, firm, partnership, corporation, limited liability company (added 1994), association, other organization or its employees or agents. "Preparation" including giving advice, "drafting an application, brief, document, petition or other paper, or completing a form provided by a federal or state agency in an immigration matter."

⁴⁵ For example, stating that there is a new amnesty program or that labor certifications are easily obtained by manual laborers; representing that the consultant can guarantee obtaining employment authorization in an asylum application; or misrepresenting that the consultant has written the applicant's true date of entry into the U.S. or true life story when instead the consultant wrote a fictitious story in order to "improve" the applicant's case.

⁴⁶ For example, occasionally there are immigration "lotteries" in which an undocumented person can fill out a simple postcard and mail it in. Unscrupulous providers have charged several hundred dollars for completing the card, alleging that much work was involved.

⁴⁷ Calif. P.C. §653.55.

office brought the action; if the district attorney or county counsel brings the action, the fee will be paid to the treasurer of the county in which the judgement was entered.⁴⁸

Local governments and state or county prosecutors also can obtain an injunction against the person from a superior court.⁴⁹ Intentional violation of the injunction is grounds for a civil penalty of up to \$2,500 per violation. Where the unlawful conduct is of a continuing nature, each day of the conduct is a separate violation.⁵⁰

A victim can bring civil suit to recover actual damages or \$500, whichever is greater, plus the costs of the suit including reasonable attorney's fees.⁵¹

The remedies or penalties provided are cumulative to each other and to all other California laws.⁵² Thus, a defendant who harmed one victim theoretically could be sentenced to jail and a criminal fine of \$2,500, plus be liable for a civil fine of \$2,500 in a suit brought by a district attorney, as well as other money for restitution and attorneys' fees pursuant to a civil suit by the victim, as well fines under some other section of California law, such as failure to obtain the \$10,000 bond required for some immigration consultants.

II. Grand Theft Under Calif. P.C. § 487

Definition of the Offense: The elements of the crime of theft on the theory of fraud committed by false pretenses are: (1) the defendant made false pretense or representation, (2) the representation was made with intent to defraud owner of property, and (3) the owner was in fact defrauded in that he parted with his property in reliance on representation.⁵³ Larceny by fraud or trick also constitutes theft.⁵⁴

With a few exceptions, an element of grand theft is that the value of the property taken exceeds \$400. Grand theft is a "wobbler" punishable as a felony or misdemeanor by a prison or jail sentence and/or a fine of up to \$10,000. Petty theft is defined as theft of property valued at less than \$400. It is punishable as a misdemeanor with a maximum 6 month sentence/\$1,000 sentence.⁵⁵

Aggregating the Value of Property Taken. While many immigrant victims pay far more than \$400, other individuals are too impoverished to pay this much money. As long as the action constituting the

⁴⁸ Calif. P.C. §653.59. The Attorney General or any district attorney, county counsel, city attorney or city prosecutor in the state can file suit.

⁴⁹ Calif. P.C. §653.57.

⁵⁰ Calif. P.C. §653.58.

⁵¹ Calif. P.C. §653.60.

⁵² Calif. P.C. §653.61.

⁵³ See, e.g., People v. Gentry (App. 4 Dist. 1991) (285 Cal.Rptr. 591, 234 Cal.App.3d 131 (theft by false pretenses where defendant promised to legally clear up victim's credit history for \$980 with no intent to do so).

⁵⁴ See, e.g., People v. Kagan (1968) 70 Cal.Rptr. 732, 264 C.A.2d 648 (defendant committed larceny by fraud or trick and theft by false pretenses where defendant convinced bank to issue a letter of credit under false pretenses that it would be used for certain purpose).

⁵⁵ See Calif. P.C. §487-489, 672.

offense was committed pursuant to a single plan, the amounts stolen from victims must be aggregated and if they reach the \$400 statutory minimum they will constitute one violation of grand theft.⁵⁶ Some early cases held that the value should not be aggregated in instances of theft by false representation,⁵⁷ but since then courts have established that value should be aggregated if the offense was committed pursuant to a single plan.⁵⁸

Offering bogus legal services based on a false promise to obtain immigration benefits is the kind of fraud held to constitute grand theft by false pretenses.⁵⁹

Examples of false statements with intent to defraud by an immigration consultant include the following:

- * A statement intended to make the immigrant believe that a program or application exists, when it does not exist.

In San Francisco, flyers were distributed in the Mission District announcing a new general amnesty program existed. In reality the only new immigration law was a change in the procedure for how certain family members can immigrate.

- * A false statement that the client qualifies for an existing immigration benefit.

A consultant might collect money for preparing a visa petition that will never be approved. For example, the consultant told a permanent resident mother that she could petition for her married daughter to immigrate, when in reality married children of permanent residents cannot immigrate through a parent.

- * A false statement regarding the benefits that the client who does qualify for an application would gain (e.g., a green card within the next year, when in reality the wait will be several years).

- * A false statement that the consultant can obtain a result that is not obtainable.

In the Bay Area, a consultant advertised on the radio that it could submit applications for "suspension of deportation" for persons who had lived in the U.S. for seven years. In reality, the agency did not have the power to submit such applications; only persons who are under deportation proceedings before an

⁵⁶ See, e.g., People v. Columbia Research Corp. (1980) 163 Cal.Rptr.455, 103 C.A.3d Supp. 33 (series of thefts less than statutory amount could be cumulated to grand theft where accomplished as a result of one scheme and with single intent to act); People v. Slocum (1975) 125 Cal.Rptr. 442, 52, C.A.3d 867, cert. denied 96 S.Ct. 2635 (if there is a general intent or overall plan, values will be aggregated to make single crime of grand theft).

⁵⁷ See, e.g., People v. Howes (1950) 222 P.2d 969, 99 C.A.2d 808.

⁵⁸ See, e.g., People v. Bailey (1961) 55 C.2d 514, 11 Cal.Rptr. 543, People v. Sullivan (1978) 80 Cal.App.3d 16, 145 Cal.Rptr. 313.

⁵⁹ See, e.g., People V. Lewis (1986) 230 Cal.Rptr. 115, 185 C.A.3d 923 (evidence that defendant's offer to sell cars to victims was a sham supported grand theft conviction); People v. Kagan (1968) 70 Cal.Rptr. 732, 264 C.A.2d 648, cert. denied 89 S.Ct. 1027 (evidence that defendant intentionally misled complainants to the effect that money they gave would be used to supply letters of credit showed violation of theft by fraud and larceny by fraud or trick).

immigration judge can apply for this relief, and with few exceptions the INS will not place someone under such proceedings upon the person or agency's request.

- * A false statement regarding an immigration benefit the consultant does acquire for the client.

Some consultants get their clients employment authorization and lead them to believe that this temporary permit is lawful permanent resident status (a green card).

Others provide the client with a document signed by the consultant him or herself, and lead the client to believe that this is protection against deportation or some other benefit.

III. Unfair Competition under Calif. B&P § 17200 et seq.

Definition of the Offense: Section 17200 of the Business and Professions Code provides that:

"Unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

A violation of a business regulation can be used as a per se violation of the unfair competition statute. "[I]n essence, an action based on Business and Professions Code § 17200 to redress an unlawful business practice 'borrows' violations of other laws and treats these violations when committed pursuant to business activity, as unlawful practices independently actionable under section 17200 et seq. and subject to the distinct remedies provided thereunder."⁶⁰ So, if an immigration consultant fails to post a notice required under Calif. Business and Professions Code § 22442, the consultant will be in violation of both that section and the Unfair Competition section of the statute. Essentially, the broad construction of "unlawful" permits prosecution under § 17200 whenever the Business & Professions Code is violated.

Furthermore, a plaintiff, acting on his own interest, on behalf of its members, or for the general public, can sue without having to show that the plaintiff was directly harmed by the defendant's business practices... 'Unfair' is simply defined as any business practice whose harm to the victim outweighs its benefit.⁶¹

To show unfair competition, it is not necessary to show that a tort has been committed; one need only show that members of the public are likely to be deceived.⁶²

Possible Examples of Unfair Competition by Immigration Consultants

- * Violations of the California immigration consultant law are per se violations of the unfair competition statute; examples include failure to post certain notices, provide a written

⁶⁰ Farmers Insurance Exchange v. Superior Court, 2 Cal. 4th 377, 383 (1992).

⁶¹ Saunders v. Superior Court, 27 Cal.App. 4th 832, 839.

⁶² Bank of the West v. Superior Court (Indus. Indem. Co. (1992) 10 Cal Rptr.2d 538, 2 Cal.4th 1254; Chern v. Bank of America, 15 Cal.3d 876, 127 Cal.Rptr. 110, 544 P.2d 1310.

contract, post a \$10,000 bond, retain copies of clients documents, return originals; use of phrases such as "notario publico" with intent to mislead; and other offenses described in Part I of this manual.

- * Advertising help in applying for immigration programs that do not exist ("New Amnesty Law") or for immigration programs that will not give the advertised benefit (such as misrepresenting that a carpenter or dishwasher can immigrate quickly through the existing "labor certification" process).
- * Announcements that misrepresent the legal effect of services offered (such as advertising that an agency is certified to offer the ETS English test that fulfills the language requirement for naturalization, when the agency has no certification and passing the test is worthless.
- * Bad business practice: not providing the services paid for; completing the application form with false information and not informing the client; persuading the client that it is necessary to commit fraud.

Remedies, Procedure

A person found to engage, have engaged, or be proposing to engage in unfair competition is liable for a civil penalty of up to \$2,500 per violation.⁶³ In assessing the violation, the court shall consider circumstances such as "the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth."⁶⁴

If the victims included one or more senior citizens or disabled persons, the court may impose an additional penalty of up to \$2,500 per violation.⁶⁵ The section sets out several factors for the court to consider in determining whether to impose this penalty and the amount to be imposed.⁶⁶ Many foreign born senior citizens, even those who now are U.S. citizens, are at a special disadvantage because they have not completely mastered English or are isolated from basic consumer information; special vulnerability due to age and impaired understanding are factors in considering this penalty.

The Attorney General or any district attorney can bring suit under these sections, as can some other public officers specified in the chapter.⁶⁷ If a district attorney brings the suit, moneys collected will go to the treasury of the county where judgement was entered.⁶⁸

⁶³ Calif. B&P §17206(a).

⁶⁴ Calif. B&P §17206(b).

⁶⁵ Calif. B&P §17206.1(a). Section 17206.1(b) provides the definition of disabled person and defines senior citizen as a person who is 65 years of age or older.

⁶⁶ Calif. B&P §17206.1(c).

⁶⁷ See Calif. B&P §§17204, 17204.5 (regarding San Jose).

⁶⁸ Calif. B&P §206(c). Section 17206(c) and (d) also sets out how the money will be handled if other entities bring the suit.

Conduct constituting "unfair competition" can be enjoined by a court of competent jurisdiction. Options for injunctive relief include restoring money or property to victims of unfair competition and appointing a receiver.⁶⁹

If a violation of unfair competition or construction of the statute is at issue in any state appellate or Supreme Court proceeding, the person bringing the action must, within three days of the start of the action, provide a written notice including a copy of the petition and/or brief to the Consumer Law Section of the Attorney General and the district attorney of the county in which the lower court action was originally filed. No judgement or relief will be granted until proof of service of this notice is filed with the court.

IV. False or Misleading Statements Under Calif. B&P Section 17500

Section 17500 states in part that it is unlawful for any person or entity to make any statement (in newspaper, publication, advertising, "public outcry" etc.) offering goods or services that is untrue and misleading, with the intent to thereby induce the public to enter into an obligation relating to the goods or services.⁷⁰

Examples of violations relating to immigration services include:

- * Flyers distributed in a community announcing a program that does not exist, or providing false information about a program, and inviting the public to a for-charge seminar or application session.
- * Radio announcements, new articles, appearances on radio talk shows, distributing this kind of knowledge.

Any violation of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or a fine not exceeding \$2,500 per violation, or both. Courts have held that a single false advertisement in a newspaper constitutes one violation with as many additional violations as there are persons who read the ad or responded by purchasing the advertised product or service or making inquiries about it.⁷¹ Or, a court may impose liability and civil penalties without individualized proof of reliance, deceptions and injury if it is convinced that such a remedy is necessary to deter unfair practices.⁷²

PART THREE -- FEDERAL OFFENSES

⁶⁹ Calif. B&P §17203.

⁷⁰ Section 17500 reads: "It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, to induce the public to enter into any obligation or to disseminate to the public by any means any statement concerning services which is untrue or misleading and which is known or should reasonable be known to be untrue or misleading. It is unlawful to disseminate any statement of a plan with the intent not to provide such services that are advertised. Any violation of this section is a misdemeanor punishable by imprisonment in the county jail up to 6 months and/or a fine up to twenty-five hundred dollars (\$2,500), or by both that imprisonment and fine."

⁷¹ People v. Superior Court of Orange County (1979, 4th Dist) 157 Cal.Rptr. 628, cert. denied 446 U.S. 935, interpreting B&P Code 17536.

⁷² People v. Dollar Rent-a-Car Systems, Inc. (1989, 1st Dist.), 259 Cal.Rptr. 191.

If the consultant (or attorney) has committed a federal offense, the U.S. Attorney may be persuaded to be interested in the criminal case. Many of a fraudulent providers actions could come within normal economic crimes under the federal code, such as **mail fraud** if the perpetrator used the mail.

One long-existing offense specifically geared to immigration work is **conspiracy to commit or aiding and abetting fraud or misuse of immigration documents, under 18 U.S.C. § 1546**. Section 1546(a) prohibits in part:

- * creating, possessing or using a false immigration document such as a visa, permit, green card, or border crossing card, possessing blank permits or means of forging such documents.
- * impersonating another, appearing under an assumed name,
- * knowingly making a false statement under oath or penalty of perjury with respect to a material fact in any application, affidavit, or other document required by immigration laws, or knowingly presenting such a false document.

A consultant or attorney who helps someone to commit immigration fraud would be guilty of this offense.⁷³ The penalty for violating § 1546(a) is ten years or more. For offenses committed to facilitate a drug crime or terrorist act the penalty is twenty years and twenty-five years respectively, if the act occurred on or after September 30, 1996.⁷⁴

In 1996, Congress created a new federal criminal offense aimed at unscrupulous providers: failure to disclose role as a preparer of a false application for immigration benefits. The offense carries a penalty of up to fifteen years in prison.⁷⁵

PART FOUR -- Resources and Referrals

I. Groups and Agencies

Public interest law firms, ethnic community organizations and legal agencies, and the private immigration bar are well aware that this type of fraud is practiced on a large scale in California immigrant neighborhoods. It is no exaggeration to say that almost all organizations working in the field of immigration law -- from storefront community agencies to Bar Association projects -- are eager to work with local District Attorney offices to stop these abuses.

The following is a list of some of the organizations who have specialized in this area. They can provide referrals to other local organizations, if needed.

⁷³ See, for example, U.S. v. Sarantos, 455 F.2d 877 (2nd Cir. 1972) (attorney who assisted client to commit immigration fraud guilty of conspiracy to violate 18 USC 1546).

⁷⁴ The increased penalty was imposed by section 211(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act (September 30, 1996), amending 8 USC §1324c(e).

⁷⁵ Section 213 of the Illegal Immigration Reform and Immigrant Responsibility Act (September 30, 1996), amending 8 USC §1324c(e).

A. Groups specializing in this area

Northern California/San Francisco Bay

Immigrant Legal Resource Center (ILRC), 1663 Mission St., Suite 602, San Francisco CA 94103, tel. 415-255-9499, Attorney of the Day (ext. 6263) or Evelyn H. Cruz (ext. 278); fax 415/255-9792.

Provides technical assistance over the telephone to District Attorney offices who need sources to find expert witnesses, interpretation of foreign language documents, local community agencies or private bar members interested in working on the issue, information about state-wide providers, etc. Available for limited on-site training, discussions, and moderation of meetings between Consumer Fraud offices and local community agencies. Publishes and distributes this manual.

You can contact the ILRC for referrals to other agencies and experts in your area.

Northern California Coalition for Immigrant Rights (formerly CIRRS), 995 Market Street, 11th Floor, San Francisco, CA 94103, tel. 415-243-8215, fax 415/243-8628.

Information on statewide operators, outreach materials (including educational comic book or "novela" in Spanish and English) to warn local populations of this kind of fraud, contacts with community agencies and schools throughout northern California. The Coalition houses the **Immigrant Assistance Line**, a help line used by hundreds of monolingual immigrants each week, which collects information about fraudulent providers in Northern California; tel. 415-543-6767

Lawyers Committee for Civil Rights in San Francisco, 301 Mission St., Suite 400, San Francisco CA 94105, tel. Atty. Sara Campos at 415/543-9444, fax 415/543-0296

Consult, collect information on Northern California cases, experience in litigating against fraudulent consultants, can help obtain pro bono support in civil cases, contacts with local community agencies.

Southern California/Los Angeles

Public Counsel, 3535 West 6th Street, Suite 100, Los Angeles, CA 90020, tel. 213/385-2977, fax 213/385-9089.

Experience in litigating consumer fraud issues, collects information regarding fraud against immigrants, can help obtain pro bono support in civil cases, contacts with local community agencies.

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), 1521 Wilshire Blvd., Los Angeles, CA 90017, at 213/353-1333, fax 213/353-1344.

Information on statewide operators, outreach materials (including educational comic book or "novela" in Spanish and English) to warn local populations of this kind of fraud, contacts with community agencies and schools throughout greater Los Angeles area. Immigrant assistance line.

Southern California/San Diego

Catholic Charities, Refugee and Immigrant Services, San Diego, 4575-A Mission Gorge Place, San Diego, CA 92120, tel. 619/287-9454, fax 619/287-6328

Outreach materials and educational campaigns directed at immigrants, information about local fraudulent providers, contacts with local communities.

Groups with offices statewide

California Rural Legal Assistance (CRLA) and California Rural Legal Assistance Foundation have statewide offices, especially in more rural areas. Because of the terrible impact on farmworkers of this type of fraud, many CRLA offices have collected information and are eager to work with the District Attorney's office. For referrals to a CRLA office near you, contact the San Francisco office: CRLA, 631 Howard St., Suite 300, San Francisco CA 94105, tel. 415/777-2752, fax 543-2752.

Bar Association Voluntary Services Immigration Projects. Several local bar associations have staffed pro bono immigration projects. Staff of these projects generally will be familiar with local bad consultants and with local community agencies with more information.

II. Bibliography of Immigration Law Resources

Several immigration law reference books are available in most California Law Libraries. The following are some of the most useful.

For information on immigration law generally, see *Handling Immigration Cases*, Bill Ong Hing (Wiley Law Publications, Federal Practice Library) or *Immigration Law and Defense*, National Lawyers Guild (Clark Boardman).

For a comprehensive review of immigration law in an understandable, student-centered book, order *A Guide for Immigration Advocates*, Lydon et al., from the Immigrant Legal Resource Center (415-255-9499, \$140 or \$95 non-profit or government offices). The ILRC produces several manuals devoted to other specific areas of immigration law.

The classic multi-volume work on immigration law, which is available at most law libraries, is Gordon and Mailman, *Immigration Law and Procedure* (Clark Boardman). Along with the text, it contains the Immigration Act, the regulations the INS Operations Instructions, and other primary source materials.

To keep abreast of recent developments, consult monthly or weekly mailings:

Interpreter Releases is a weekly report of decisions, administrative action, rumor and legislation relating to immigration law. It has a subject index, and will be found in most county law libraries an immigration law offices.

The National Center for Immigrants' Rights publishes an excellent, low-cost monthly newsletter on developments in immigration law, especially affecting low-income immigrants. Contact NILC at (213) 639-3900 to order.