



# Want to end *notario* fraud? Take the law into your own hands.<sup>1</sup>

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On a rainy northwest spring day, Juan and Maria walked into a small law firm in Tacoma, Washington. They had just received a puzzling notice from the immigration service and were unsure what to do. Several months prior they had filed a “green card” application with the help of a local businessman, who also was a trusted preacher. We will call him “the Preacher.” The couple had paid the Preacher for his services and he had assured them they had an easy case.

The lawyer did not agree.

Most immigration lawyers understand that *notarios* pose a grave challenge to the communities they defraud with unlawful immigration “services.” The ABA’s Commission on Immigration has a standing “Fight Notario Fraud” project, seeking to shield the public from fraudulent immigration services.<sup>4</sup> So does the American Immigration Lawyers Association.<sup>5</sup>

This article recounts a successful lawsuit against a *notario publico* (“*notario*”) in Washington State. We discuss Washington’s robust anti-*notario* statute, which gives powerful tools to victims.

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- 4 ABA, Fight Notario Fraud, <http://bit.ly/2pxuLgo> (last visited May 10, 2017).
- 5 AILA, Stop Notario Fraud, <http://www.stopnotariofraud.org/> (last visited May 10, 2017).



We also explain how bankruptcy law generally prevents a *notario* from securing bankruptcy protection from liability for fraudulent conduct. Finally, we offer suggestions on how lawyers might successfully pursue civil claims against *notarios* in other states that lack Washington’s particular statutory tools. All of the pleadings and briefing described below is freely available to any other lawyer who would like to pursue these claims. Note that, for consistency, we use the term *notario* to refer to unauthorized immigration law practitioners. Other terms, such as “immigration consultant” or “travel agent” may be in use in various immigrant communities.

## I. A *notario* goes to court. And loses. Twice.

The Preacher had been recommended to Maria by the Preacher’s wife. The two knew each other because their children went to the same school. When she learned that Maria was trying to help her husband achieve permanent residence, the Preacher’s wife recommended Maria come down to the family’s business, which we will call “Preacher Travel, Inc.”.

Juan and Maria went to the Preacher’s office in February 2015. They explained that they were trying to secure Juan’s status as a Lawful Permanent Resident (LPR). Maria asked the Preacher if she should consult with an attorney concerning their immigration questions. But the Preacher dismissed those concerns – he said that a lawyer was unnecessary and that the process would be quick since Maria was a U.S. citizen. The Preacher assured them that Juan could adjust status in the U.S. without having to leave.

There was one question – one important question – that the Preacher did not ask: “Does Juan have proof that he entered the U.S. with inspection?”<sup>6</sup> Had the Preacher asked, the answer would have been no.

The Preacher assured the couple that he had recently completed a similar process for another client who had just received an appointment notice for their green card interview. He shared

success stories of other clients he had helped with immigration “paperwork,” reassuring the couple that he was qualified to assist with such legal processes.

Jumping into the quintessential role of the lawyer – applying law to facts – the Preacher advised the couple that Juan should pursue adjustment of status. He advised them that the Forms I-130 and I-485 were the appropriate forms to file in pursuit of that legal goal. For a fee, the Preacher then drafted the forms for the couple and signed each as the preparer. The Preacher also prepared and signed a Form *I-134*, Affidavit of Support to be submitted with the application. Maria added a check for the filing fees and mailed the packet the following day.

The next month, the couple was surprised to get a Request for Evidence (RFE). The Form I-134, of course, is the wrong Affidavit of Support for a marriage-based adjustment of status case,<sup>7</sup> and the RFE requested the correct Form I-864. But the RFE also requested that Juan provide evidence that he was lawfully admitted or paroled into the United States.

Later that summer, USCIS denied Juan’s adjustment application, explaining that he had not provided evidence of his lawful admission or parole into the United States. So, Juan and Maria sought out a lawyer.

The couple’s lawyer advised them of their potential rights to recover damages against the Preacher. Although the potential recovery was relatively modest, it could be used to partially finance the couple’s pursuit of the correct immigration process – consular processing with an unlawful presence waiver. The couple decided to pursue their claims.

Juan and Maria’s lawyer contacted the Preacher, offering to settle the matter for \$5,810. The Preacher rejected the offer immediately. So, on September 11, 2015, Juan and Maria, with the help of their Tacoma lawyer and his co-counsel, filed a complaint in Washington State Superior Court against the Preacher personally and against

6 INA § 245A; 8 U.S.C. § 1255 (adjustment of status typically requires an inspected entry).

7 See INA §213a; 8 U.S.C. § 1183a.



Preacher Travel, Inc. The Complaint alleged violations of both Washington’s “Immigration Services Fraud Prevention Act” (“ISFPA”) and the state’s Consumer Protection Act (“CPA”). As permitted by these statutes, Juan and Maria asked for damages, discretionary treble damages, costs and attorney’s fees. The Preacher initially ignored the Complaint, forcing Juan and Maria to file a Motion for Default Judgment.

Finally, with what seemed to be misplaced faith in his own legal competence, the Preacher responded with a one-page pro se Answer, amounting to a general denial of all of Juan and Maria’s allegations. Initially, the Preacher tried to represent both himself and his corporation. However, after Juan and Maria pointed out to the court that a corporation can only be represented by an attorney, the Preacher hired one. The lawyer filed an Amended Answer on behalf of both defendants, which again amounted to another general denial.

Now represented, the Preacher resisted meeting his discovery obligations. These included a request for the names and contact information of all the Preacher’s immigration fraud victims over the prior two years. Because the Preacher had suggested early on that he might seek bankruptcy protection, the couple wanted to interview other victims in hopes of identifying other potential defendants who might share the Preacher’s liability. Juan and Maria were forced to bring a Motion to Compel Discovery.

On January 2, 2016, as an apparent strategy to avoid his discovery obligation to identify his other victims, the Preacher filed a Second Amended Answer, admitting virtually every allegation in Juan and Maria’s ISFPA/CPA Complaint. The Preacher then argued that since he had admitted all allegations, discovery was no longer necessary. Juan and Maria responded that the discretionary award of treble damages permitted by the Washington Consumer Protection Act was based in part on the extent of the public impact of the

Preacher’s conduct, therefore discovery of his other victims was both relevant and necessary.

Juan and Maria’s Motion to Compel Discovery was scheduled for a hearing at 9:00 AM on January 29, 2016. The Preacher’s attorney appeared at the Discovery Motion hearing only to inform the court that, 18 hours earlier, the Preacher had filed a Chapter 13 Bankruptcy Petition. The Preacher’s attorney announced that the automatic stay of state court proceedings was therefore in place.<sup>8</sup>

The judge signed an agreed order – drafted by the Preacher’s attorney – acknowledging that the action was stayed against the Preacher personally but granting Juan and Maria’s Motion to Compel with regards to Preacher Travel Services, Inc. The judge then left the resolution of attorneys’ fees for the final judgment in the matter.

The Preacher’s Second Amended Answer had made the following specific admissions (among others):

1. His business card contained the phrase “notario publico”, which violates ISFPA and therefore was a per se violation of the CPA;
2. He falsely represented himself to Juan and Maria as qualified to counsel them on the type of immigration application for which they sought advice;
3. Believing and genuinely relying on the Preacher’s false representations and sales pitch, Juan and Maria gave the Preacher \$340.00 to select and complete immigration application forms for them; they also spent \$1,490.00 to file the forms selected and prepared by the Preacher; and
4. Juan and Maria’s immigration application was denied, and they lost their money because of the Preacher’s incorrect legal advice.

As discussed below, because ISFPA is so broad, in their state court action Juan and Maria needed only to prove that the Preacher had advised them

<sup>8</sup> State court proceedings indeed are automatically stayed when a defendant files a bankruptcy petition. 11 U.S.C. § 362.



which immigration forms they needed. In fact, Juan and Maria could have won their ISFPA claim simply by showing that the Preacher used the word “notario” on his business card.<sup>9</sup>

But to head off the Preacher’s attempt to avoid liability by filing for bankruptcy, Juan and Maria needed to show that the Preacher’s debt to them was the product of fraud.<sup>10</sup> This was not difficult, since the Preacher’s Second Amended Answer in state court had in fact, admitted to all the elements of fraud: the Preacher had admitted that he had told Juan and Maria that he was competent to handle their immigration matter, that he knew or should have known this statement was false, that Juan and Maria reasonably believed the false statement, and that because of this, Juan and Maria were out almost \$2,000.

On March 20, 2016, in reliance on the Preacher’s state court admissions, Juan and Maria filed an Adversary Complaint in the bankruptcy proceedings, alleging that the Preacher’s debt to them was nondischargeable because the debt was the product of fraud.<sup>11</sup>

On May 19, 2016, the Preacher filed a Motion for Summary Judgment in the Bankruptcy Court, asking the court to dismiss Juan and Maria’s Adversary Complaint. The Preacher, through his bankruptcy counsel, blamed his state court lawyer for persuading him to finally file an Amended Answer in the State Court, where he had admitted to all of Juan and Maria’s allegations. The Bankruptcy Court did not think this was a persuasive argument. It denied the Preacher’s summary judgment motion.

Working through their attorneys, Juan and Maria again tried to negotiate a settlement with the Preacher, but again to no avail. Finally, on December 13, 2016, Juan and Maria filed their own Motion for Summary Judgment, asking the

Bankruptcy Court to find that the Preacher’s debt to them was nondischargeable as the product of fraud.<sup>12</sup> By this time, the Preacher’s flailing, but persistent, attempts to avoid liability to Juan and Maria had necessitated substantial legal work by Juan and Maria’s attorneys.

The Bankruptcy Court granted Juan and Maria’s summary judgment motion. The Bankruptcy Judge also elected to enter a judgment on the couple’s underlying damages claims, rather than remand the claims to state court for that one task. On February 27, 2016, it awarded them \$6,240 in damages and \$35,053 in attorneys’ fees. Because the case was important in furthering public policy, and because Juan and Maria’s attorneys had taken on the case pro bono, with no payment from their clients, the Bankruptcy Court added a 1.25 “lodestar multiplier,” raising the total attorney fee award to \$43,816. With costs, Preacher now owes more than \$50,000 plus interest on a claim he could have settled for \$5,810.

## II. Washington’s Immigration Services Fraud Prevention Act.

Washington State has perhaps the nation’s strongest anti-*notario* consumer protection law. As described below, however, the authors strongly believe that practitioners should look for viable claims under statutes in other states.<sup>13</sup>

Washington’s Immigration Services Fraud Prevention Act (ISFPA) was enacted with clear findings from the State legislature about the serious impacts of *notario* fraud.<sup>14</sup> Activities prohibited by ISFPA are gross misdemeanors in the state of Washington,<sup>15</sup> though criminal prosecutions are rare. The criminalization provisions, however, serve to underscore the gravity of immigration services fraud.

9 Revised Code of Washington (hereinafter R.C.W.) § 154.020(3)(a)

10 See 11 U.S.C. § 523(a)(2)A; *Cohen v. De La Cruz*, 523 U.S. 213 (1998).

11 See Fed. R. Bankr. P. 7001.

12 R.C.W. § 19.86.090

13 See Section IV *infra*.

14 R.C.W. § 19.154.010 (“The legislature finds and declares that the practice by nonlawyers and other unauthorized persons of providing legal advice and legal services to others in immigration matters substantially affects the public interest...”).

15 R.C.W. § 19.54.100.



ISFPA is an example of what is sometimes called a “private attorney general statute.”<sup>16</sup> That is, private citizens – and their lawyers – are given standing to redress the sort of public harms that are normally policed by only the state. In Washington, ISFPA works in conjunction with the State’s CPA.<sup>17</sup> Any violation of ISFPA is per se conduct that “substantially affects the public interest and is an unfair deceptive act or practice” under the CPA.<sup>18</sup> A *notario*’s victim is thereby authorized to bring a civil damages action under the CPA, where she may recover up to treble damages, plus “reasonable attorney fees.”<sup>19</sup> As shown above, a fee award may justifiably dwarf the principal liability in a *notario* fraud case.

Under ISFPA, a *notario*’s direct victims – Juan and Maria in the case above – have a clear claim for damages. But lawyers also are harmed financially by *notarios*, who serve as unfair and unqualified competition in the legal services marketplace. ISFPA acknowledges this, and declares that any violation of ISFPA is per se an “unfair method of competition in the conduct of trade or commerce.”<sup>20</sup> A Washington lawyer could, therefore, bring an action against a *notario* on the grounds that the *notario* is engaging in unfair competition. To date, no such action has ever been brought.

In terms of prohibited activities, ISFPA proscribes virtually all immigration-related activities aside from translation, which is tightly defined.<sup>21</sup> All of the following are prohibited, unless the individual engaged in the action is a licensed attorney or representative accredited by the Office of Legal Access Programs:

- Perhaps most strikingly, using *any* of the following terms in business or marketing

materials<sup>22</sup> is a *per se* violation of ISFPA: “notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or [...] any other designation or title, in any language, that conveys or implies that [the individual] possesses professional legal skills in the area of immigration law.”<sup>23</sup> Thus, merely providing a business card showing the word “*notario*” is a crime in the State of Washington. Though brazen, a surprising number of businesses still boldly list the term on the sign outside their establishments.<sup>24</sup>

- An action that qualifies as the practice of law in an immigration matter.<sup>25</sup>
- “Advising or assisting another person in determining the person’s legal or illegal status for the purpose of an immigration matter.”<sup>26</sup> This would be violated by advising someone as to their particular legal (or unlawful) status in the U.S.
- “Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter.”<sup>27</sup> Thus a violation occurs where a *notario* tells a customer that she is eligible to file a particular immigration form, or advises her on the significance of answering a particular way.
- “Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter.”<sup>28</sup> Hence, it would be a violation for *notario* to advise a customer that he may qualify for DACA.
- “Soliciting to prepare documents for, or otherwise representing the interests of, another

16 See e.g. explanation of such statutes in *Klehr v. A.O. Smith Corp.* 521 U.S. 179, 198 n.2 (1997) Scalia, J. concurring).

17 R.C.W. § 19.86.

18 R.C.W. § 19.154.090(1).

19 R.C.W. § 19.154.090(2).

20 R.C.W. § 19.154.090(1).

21 RCW § 19.154.065(1).

22 The Act prevents the use of these terms “orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material.” R.C.W. § 19.154.090(3)(a).

23 R.C.W. § 19.154.090(3)(a).

24 Univision has continued to report on notarios in the Seattle area who advertise themselves as such.

25 R.C.W. § 19.154.060(1) (if done for compensation).

26 R.C.W. § 19.154.060(2)(a) (if done for compensation).

27 R.C.W. § 19.154.060(2)(b) (if done for compensation).

28 R.C.W. § 19.154.060(2)(c) (if done for compensation).



in a judicial or administrative proceeding in an immigration matter.”<sup>29</sup> Thus marketing and business development efforts by a *notario* are violations of ISFPA.

- “Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter.”<sup>30</sup> Certainly, it would be a violation to offer any input whatsoever on whether particular conduct merited an affirmative answer on the laundry list of inadmissibility issues on a Form I-485.

Washington, therefore, provides broad and powerful tools for fraud victims – and even local immigration lawyers themselves – to thwart the unlawful practice of immigration law. Asserting these claims can be attractive to the victims, as they may be rewarded with up to three times their actual damages. Likewise, lawyers are given a fee award for work they might otherwise pursue on a purely pro bono basis, and may even receive the bonus of a fee multiplier for their efforts.

### III. An important side-note: *notarios* cannot escape liability via bankruptcy.<sup>31</sup>

A civil judgment does nothing to help your client if she cannot collect it. In the case described above, the Preacher hoped to escape his financial obligation to his victims by seeking the protection of bankruptcy. But bankruptcy protections are available only for the honest debtor. Where the elements of fraud are met – as described in the Bankruptcy Code – a *notario* cannot discharge a debt to his victims. This section provides a thumbnail sketch of that topic.

Adversary Proceedings are a way for a creditor to file a civil complaint under the main bankruptcy case, challenging the dischargeability of a debt.<sup>32</sup> Bankruptcy Code Section 523(a)(2)(A) prevents the discharge of debts, including attorneys’ fee, which are traceable to fraud.<sup>33</sup> A plaintiff in a bankruptcy adversary proceeding who alleges that a debt is nondischargeable pursuant to Bankruptcy Code Section 523(a)(2)(A) due to fraud, false misrepresentation or false pretenses must prove these allegations only by a preponderance of the evidence.<sup>34</sup>

In order to establish that a debt is nondischargeable under section 523(a)(2)(A), a creditor must establish five elements by a preponderance of the evidence:

(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor’s statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor’s statement or conduct.<sup>35</sup>

Intent is typically established with circumstantial evidence, “since it will be the rare case in which the debtor testifies under oath that he or she intended to defraud creditors.”<sup>36</sup> In fact, fraud is generally brought to light by the consideration of circumstantial evidence.<sup>37</sup>

In many scenarios, a *notario*’s actions easily meet all five elements of nondischargeable fraud. A *notario* engages in **knowing misrepresentation** per se when he delivers unlawful immigration services. He knows that he is not a lawyer and knows he is legally unqualified to provide those

29 R.C.W. § 19.154.060(2)(d) (if done for compensation).

30 R.C.W. § 19.154.060(2)(e) (if done for compensation).

31 R.C.W. § 19.154.090(1).

32 Cf. Fed. R. Bankr. P. Part VII.

33 See Cohen v. De La Cruz, 523 U.S. 213 (1998) (“The Bankruptcy Code has long prohibited debtors from discharging liabilities incurred on account of their fraud, embodying a basic policy animating the Code of affording relief only to an honest but unfortunate debtor”).

34 11 U.S.C. § 523; Grogan v. Garner, 498 U.S. 279, 91 (1991).

35 Ghomeshi v. Sabban, 384 B.R. 1, 6 (9th Cir. BAP. 2008).

36 Leonard v. Coolidge, 367 B.R. 207, 219 (Bkrcty.D.Nev. 2007).

37 Sea Win, Inc. v. Tran, 301 B.R. 576, 852 (Bkrcty.S.D.Cal. 2003). The circumstantial evidence need not be strong; ordinary circumstantial evidence will suffice. Barry v. Santander Bank, 541 B.R. 219, 241 (Bkrcty.D.Del. 2015).



services. He will also very likely affirmatively misrepresent his understanding of immigration law – if his victim has been damaged, that almost certainly means that the *notario* did not know as much as he thought.

A *notario*'s conduct is **deceptive** for similar reasons. While the element requires subjective intent to deceive, that intent is gauged circumstantially and through inference.<sup>38</sup> Mere recklessness may satisfy the intent requirement of this element.<sup>39</sup> A debtor who knew or should have known that he could not competently provide the services he was selling can be found to have knowingly engaged in misrepresentation and deceptive conduct.<sup>40</sup> For example, where a contractor represented to customers that he was both qualified and licensed to do competent remodeling work when, in fact, he was neither, and the work provided was disastrously inadequate, a Bankruptcy Court found that the contractor knew or should have known that his representations were false and would induce the plaintiffs to act.<sup>41</sup> Likewise, when a *notario* signs off on immigration forms, he is certifying that he is qualified to do something he is not qualified to do. He understands – or certainly ought to – that he is not legally qualified to be doing so. Furthermore, the *notario* likely will have business and marketing materials that suggest, or state outright, that he does immigration services work. In doing so, he is actively deceiving the public regarding his qualifications and professional abilities.

**Justifiable reliance** should pose little problem. *Notarios* use deception to establish themselves as trusted figures in their community. It is not uncommon – as in the case described above – to find them intertwined with a religious community, presenting themselves as upright members of, or even leaders in, that community. *Notarios* purposefully use a term to describe themselves

which connotes a legitimate status in the home countries of their victims. A Mexican is as justified in turning to the advice of a *notario* in the United States as a Londoner would be in picking up the phonebook to find a barrister.

### Practice Tip

The elements which must be proved to prevail on a consumer protection claim may differ significantly from the elements required for non-dischargeability in bankruptcy. That is to say, “unfair or deceptive trade practice for purpose of a CPA claim may not be per se “fraud” for purpose of the Bankruptcy Code. For this reason, we recommend that all CPA complaints filed against *notarios* also plead common law fraud, including knowing misrepresentation with an intent to deceive and justifiable reliance on the part of the victim-plaintiff. Discovery and admissions on the common law fraud claim will best prepare the victims to defend their rights in Bankruptcy Court, should the need arise.

## IV. Suing *notarios* in your state - take the fight to their doorstep!

While Washington's statute is especially strong, practitioners from other jurisdictions have similar tools available to them. For private litigants, it is undoubtedly helpful to have the benefit of a statute specifically designed to address harms caused by the unlicensed practice of immigration law. However, even in the absence of such a statute, strong claims against *notarios* may be brought under state consumer protection laws alone.

At least two other states, California, and Texas, also have statutes specifically designed to attack the unlicensed practice of law in a manner which preys on immigration clients. Like most

- 38 Dancor Construction v.Haskell, 475 B.R. 911, 920-921 (Bkrtcy.C.D.Ill. 2012) (“Where a debtor knowingly or recklessly makes a false representations which the debtor knows or should know will induce another to act, an intent to deceive may be inferred.”); Koller v. Hoffman, 475 B.R. 692, 701 (Bkrtcy.D.Minn. 2012) (A debtor’s “knowledge of the falsity of his statements is satisfied when he should have known the falsity”).
- 39 Arm v. Morrison, 175 B.R. 349, 354 (9th Cir. BAP 1994) (“Reckless misrepresentations will support a cause of action under Bankruptcy Code Section 523(a)(2)”).
- 40 Matter of Tran, 301 B.R. 576, 582 (Bkrtcy.S.D.Cal. 2003).
- 41 Santiago v. Hernandez, 452 B.R. 709, 721 (Bkrtcy.N.D.Ill. 2011). The court found that the contractor’s debt to the plaintiffs was the result of fraud and therefore not dischargeable in bankruptcy. Id. at 726.



consumer protection regimes, California and Texas statutes afford a private right of action including a discretionary award of reasonable attorney fees. Illinois lacks a specific civil remedy against *notarios*, but its criminal immigration consultant statute can be used in tandem with a CPA claim.

### Consumer protection claims, generally.

A person who does business with almost any *notario*, in any state, is virtually certain to be the victim of unfair or deceptive trade practice. There is a good chance that the victim will have at least some documentary evidence of the business misconduct, often in the form of receipts for money paid to the *notario*, business cards, or advertisements. In conjunction with the plaintiff's detailed affidavit, it may be relatively easy to establish that, at minimum, the *notario* overstated his competence to perform the services purchased by the customer. The *notario* thus may be charged with engaging in the false advertising which many state consumer protection statutes are specifically designed to address.<sup>42</sup> Most state statutes provide for a private right of action, and provide that damages, costs and attorney's fees may be awarded to prevailing plaintiffs. If there is some documentary evidence plus a credible, well-written affidavit from the victim, a lawsuit should be both winnable and financially viable.<sup>43</sup>

### California

The California "Immigration Consultants" statute<sup>44</sup> permits nonlawyers to provide limited immigration services, if certain strict requirements are met.<sup>45</sup> Along with prohibiting immigration consultants' misleading use of terms such as "licensed,"

and "notary," the statute contains a provision which arguably applies even to those who have not qualified as "immigration consultants"; this provision expressly prohibits "the literal translation of the phrase 'notary public' into Spanish as 'notario publico' or 'notario'."<sup>46</sup>

The statute restrictively defines the immigration services which may be provided, for compensation, by nonlawyers, limiting such services to translations, obtaining necessary documents, making referrals to attorneys, and completing forms, so long as the immigration consultant does not provide advice regarding the answers to questions on the form.<sup>47</sup> Furthermore, the law requires a background check for all immigration consultants,<sup>48</sup> and mandates that a detailed written contract be provided with regard to all services,<sup>49</sup> and explicit, posted warnings alerting customers that the immigration consultant is not a lawyer.<sup>50</sup> The immigration consultant also must post evidence that he or she has filed a \$100,000 surety bond with the State of California.<sup>51</sup> Violation of the statute is a misdemeanor, and becomes a felony after multiple violations.<sup>52</sup>

The California statute creates a private right of action provision that extends to anyone "aggrieved" by violation of the statute; a successful plaintiff is entitled to treble damages, costs and reasonable attorney fees.<sup>53</sup> An example of such an award can be seen in the 2008 case of *Mendoza v. Ruesga*, where the California Court of Appeals emphasized both the expansive nature of California's immigration consultant statute, and its protective purpose.<sup>54</sup>

In 2002, lawyer Steve Baughman reported on

42 See e.g. New York General Business Law § 349; Florida Statutes Annotated 501.204, 501.211; Nevada Revised Statutes 598.0923 (defining deceptive trade practice), 598A.030, (defining unfair trade practice), 598A.210 (civil right of action for unfair trade practice)

43 See *id.*

44 Cal.Bus. & Prof.Code D. 8, Ch. 19.5.

45 See e.g. Cal.Bus. & Prof.Code § 22442.4 (background check); Cal.Bus. & Prof.Code § 22443.1 (bond)

46 Cal.Bus. & Prof.Code § 22442.3(a).

47 Cal.Bus. & Prof.Code § 22441.

48 Cal.Bus. & Prof.Code § 22441.

49 Cal.Bus. & Prof.Code § 22442.

50 Cal.Bus. & Prof.Code § 22442.2.

51 Cal.Bus. & Prof.Code § 22443.1; § 22442.2(a)(1).

52 Cal.Bus. & Prof.Code § 22445(b)-(c).

53 Cal.Bus. & Prof.Code § 22446.5(a).

54 169 Cal.App.4th 270 (2008).



his successful use of California’s immigration consultant statute in what he referred to as “Operation Cleanhouse.”<sup>55</sup> Mr. Baughman – and apparently others – asked staff to inspect the premises of immigration consultants, and then brought a dozen or more private actions against businesses that were out of compliance. He reported the cases were 100% successful. Although Mr. Baughman was not awarded damages, he reports that he was able to recover fees from the immigration consultants he successfully sued, essentially being paid for putting them out of business.

### Texas

In Texas, it is a misdemeanor – or a felony after a previous conviction – for a nonlawyer to misleadingly suggest that he or she is an attorney licensed in Texas.<sup>56</sup> It is permissible to use the terms “notario” or “notario publico” only if a dual language notice is posted reading “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”<sup>57</sup> Nonlawyers are outright prohibited from,

solicit[ing] or accept[ing] compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters . . .<sup>58</sup>

Similar to the Washington State approach, any such conduct is a per se deceptive trade practice, creating a private right of action under the Texas Deceptive Trade Practices statute.<sup>59</sup> A prevailing plaintiff in Texas is entitled to damages, including

damages for mental anguish if appropriate,<sup>60</sup> plus costs and attorney’s fees<sup>61</sup>.

### Illinois

In contrast to Washington, California, and Texas, Illinois has only a criminal “immigration consultant statute” which addresses the unlicensed practice of immigration law.<sup>62</sup> Illinois’s criminal “immigration consultant statute” may be enforced only by the state Attorney General and most municipalities.<sup>63</sup> Nevertheless, Illinois case law shows that a plaintiff can exercise the private right of action under the state’s consumer protection statutes, and refer to the state’s “notario statute” to support his or her claim that the criminal conduct involved in unlicensed practice of immigration law also constitutes deceptive trade practice.

Similar to California, the Illinois statute tightly restricts the “immigration services” a nonlawyer may offer. For example, nonlawyers in Illinois are permitted to fill out forms on behalf of their customers, but not “advise a customer as to his or her answers on those forms.”<sup>64</sup> As in California, nonlawyers in Illinois may assist in “Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms.”<sup>65</sup> Working in conjunction with statutes restricting notaries public, Illinois further restricts immigration consultants by limiting to extremely nominal fees the amounts which can be charged for such services as completing immigration forms or notarizing documents for immigration purposes.<sup>66</sup> For example, the translation fee for documents to be used in immigration applications is limited to

55 Steven Baughman, *Sleazy Notarios: How to Crush Them and Get Paid For It*, 17.4 *Bender’s Immigr. Bull.* 187 (Feb. 15, 2002).

56 Texas Government Code (hereinafter “Tex. Gov’t”) § 406.017(a).

57 Tex. Gov’t § 406.017(a)-(b).

58 Tex. Gov’t § 406.017(a)(2).

59 Tex. Gov’t § 406.017(f).

60 Texas Business & Commercial code (hereinafter “Tex. Bus. & Com.”) § 17.50(b)(1).

61 Tex. Bus. & Com. § 17.50(d).

62 815 Illinois Compiled Statutes (hereinafter “ILCS”) 505/2AA.

63 815 ILCS 505/2AA(m).

64 *Id.*

65 815 ILCS 505/2AA(b). Compare Cal.Bus. & Prof.Code § 22441(a)(3).

66 5 ILCS 312/3-104(b).



\$10 per page.<sup>67</sup> Violation of the statute is a Class A misdemeanor for a first offense and Class 3 felony for second or subsequent offenses.<sup>68</sup>

With regard to consumer protection, the Illinois Consumer Fraud Act,<sup>69</sup> like most state consumer protection statutes, protects consumers against “fraud, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”<sup>70</sup> The Illinois general consumer protection statute allows for a private right of action and permits a court to award “actual economic damages or any other relief which the court deems proper,”<sup>71</sup> including, at the discretion of the court, “reasonable attorney’s fees and costs to the prevailing party.”<sup>72</sup>

Although the Illinois immigration consultant law affords no private right of action, it can be used in conjunction with the state’s CPA to ensure that it is financially possible for the victim of a notario to obtain compensation. An example of the two statutes working in tandem can be seen in the 2011 case of *Gamboa v. Alvarado*, where a court found that a notario’s criminal conduct helped to establish the plaintiffs’ private right of action under the Illinois Consumer Fraud Act.<sup>73</sup>

### Unauthorized Practice of Law complaints.

Failing all else, an attorney may at least file a formal complaint against a *notario* for the unauthorized practice of law (UPL). Though jurisdictions vary, reports are generally made to a division of a state’s attorney general’s office. Even if successful, a UPL claim will not typically result in financial compensation to the victim.

## V. Conclusion

State consumer protection laws can be powerful tools to address the deceptive and sleazy trade practices which commonly form the foundation of “immigration consultant” or *notario* businesses. Because most states provide for a private right of action, with costs and attorney fees to a prevailing plaintiff, consumer protection actions may be financially feasible, even for plaintiffs of limited means. We believe these powerful tools are greatly underused. We caution that an attorney contemplating an action of this nature should look ahead and prepare for the possibility that the defendant will try to escape down the rabbit’s hole of bankruptcy. But you should follow the *notario* there as well, and ensure that your client – and you yourself – get compensated.

Sample pleadings and legal briefs for the case described above are freely available at [www.soundimmigration.com](http://www.soundimmigration.com).

67 5 ILCS 312/3-104(b)(2).

68 815 ILCS 505/2AA(m).

69 815 ILCS 505/1 et seq.

70 *Krautsack v. Andersson*, 861 N.E.2d 633, 645 (Ill 2006).

71 815 ILCS 505/10a(a).

72 815 ILCS 505/10a(c); see also *Krautsack*, 861 N.E.2d at 645-46.

73 941 N.E.2d 1012 (Ill.App 2011).

