

Committee on the Unauthorized Practice of Law
Appointed by the New Jersey Supreme Court

UPLC Opinion 42
Supplementing UPLC Opinion 27

Immigration and Naturalization Representatives
and the Unauthorized Practice of Law

Opinion 27 of the Committee on the Unauthorized Practice of Law (133 *N.J.L.J.* 652 and 2 *N.J.L.* 324, March 1, 1993) was directed to out-of-state attorneys seeking to practice immigration law in New Jersey. It stated that attorneys who were not members of the New Jersey Bar could not establish offices in this State for the purpose of conducting business.

Out-of-state attorneys are permitted to represent clients before tribunals and agencies of the Department of Homeland Security, and the Department of Justice, Executive Office for Immigration Review in New Jersey but those out-of-state attorneys may not open offices in the State for the purpose of that representation. Our Opinion 27 also referred to “several exemptions for non-lawyer representation” under the provisions of 8 *C.F.R.* §292.1 and “means by which to become an accredited representative.” See 8 *C.F.R.* §292.1(a)(4) and 8 *C.F.R.* 292.2. Attorneys, law students, and law graduates may represent others pursuant to 8 *C.F.R.* §292.1(a)(1) & (2). Other reputable individuals including family members (8 *C.F.R.* §292.1(a)(3), (4), and (5)) also may request either accreditation by the Board of Immigration Appeals or permission to appear before the immigration courts.

This Committee has heretofore declined jurisdiction in immigration matters, reasoning that, as pointed out above, federal accreditation can be granted to non-lawyer representatives and that should representation be undertaken without proper accreditation and authorization, those who undertake such representation would be prohibited from acting and be subject to sanctions. However, experience has shown that many kinds of unauthorized assistance in immigration matters will not rise to the attention of immigration authorities and consequently no prohibitions will be raised or sanctions imposed. Our Committee has received and continues to receive many complaints from seriously aggrieved parties who have paid for immigration consultations, filings, or representations only to be misled, cheated, or advised deficiently, thereby causing losses of money, time, and most importantly, rights and remedies.

This Opinion seeks to provide notice and guidance to those seeking assistance in immigration and naturalization matters, to putative providers of those services, and to

courts and authorities before whom such matters may be brought. The Committee earlier provided guidance and instructions to notaries public concerning permissible activities and avoidance of unauthorized practice of law. See, UPLC Opinion 41, 178 *N.J.L.J.* 444 (October 25, 2004) and 13 *N.J.L.* 2273 (November 1, 2004) and for a Spanish language version, 181 *N.J.L.J.* 295 (July 25, 2005) and 14 *N.J.L.* 1497 (August 1, 2005). For a detailed analysis of the interplay between an attorney's professional misconduct and notaries public engaged in the unauthorized practice of law in immigration matters, see *In re Valinoti*, 2002 WL 31907316, at pp.11-13, Cal. Bar Ct., 2002. December 31, 2002.

Frequently, non-lawyers -- often notaries public and others without legal credentials -- offer their services to immigration and naturalization petitioners and defendants without requesting federal accreditation. The services they provide may be sub-standard and expensive. The services may be incomplete and out-of-time, resulting in irreversible loss of standing for review and other penalties. Yet offers of unauthorized representation proliferate. Harm is being done to the legal rights and interests of untold numbers of applicants and litigants in immigration matters. In 5 *Geo. J. Legal Ethics* 237 (1991), an article entitled "The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation", Alexandra M. Ashbrook stated at page 252 regarding the consequences of incompetent representation:

The number of people who lose benefits under the immigration laws due to bad advice or fraud by nonlawyers remains incalculable. Immigration proceedings affect all aspects of a person's life: a person's physical liberty revolves around her ability to remain in the country free of custodial detention; a person's social and familial relationships could be impacted by her ability to stay or leave the country; a person's access to superior education and medical care are affected; a person's further traumatization of renewed past persecution due to improper handling of her case; and a person's financial ability to earn a living could be determined by her ability to obtain legal status. Thus, a relevant factor in considering any further expansion on non-lawyer services in the immigration field versus the need to eradicate present abuses of the limited non-lawyer practicing exceptions must address the vast potential for consumer harm, unparalleled in most other legal fields.

In other areas of law, incompetent representation might be mitigated by factors of prospective relief or loss of small monetary value. However, in the immigration field, the risks of incompetent representation are devastating. U.S. Immigration Judge Dana Marks Keener concludes:

Deportation is often tantamount to exile, with consequences which affect family members as well as the

individual himself. In the worst case, inappropriate deportation can lead to incarceration, torture, or death at the hands of a persecutorial government from which the consumer sought refuge. To complicate matters, it is very difficult for laymen to independently assess what constitutes competent practice. To the layman or untrained attorney, immigration forms may appear to be simple biographic questionnaires; however the implications and possible pitfalls from their use or misuse are abundant ... Moreover, unlike other areas of law where a complaint could be filed to seek damages for injuries caused by incompetent practice, this consumer group may be too unsophisticated to bring a malpractice suit or might be physically unable to do so because they find themselves deported to a foreign country without access to U.S. courts. [Citations omitted.]

We believe that the interests of the public will be better served if this Committee works cooperatively with federal authorities in this regulatory area. In most complaints filed with our Committee it appears that the ministrations of unauthorized representatives are rarely brought before immigration agencies; if they are, defects in the filings and proceedings often already have resulted in irreparable harm to the unwary litigant-victims. In a cooperative venture, our Committee will continue to receive complaints from attorneys and the public alleging unauthorized practice of law in immigration matters. The Committee will then examine the alleged qualifications of the respondent under 8 *C.F.R.* §292.1 and his or her compliance with the conditions set forth in the pertinent subsection under which representation is undertaken. If a respondent before our Committee is found to be unaccredited or otherwise not permitted to provide representation or services in immigration matters, the Committee will communicate with Department of Justice, Executive Office for Immigration Review, the local immigration court, the Department of Homeland Security Office of Citizenship and Immigration Services and Immigration and Customs Enforcement asking whether the agencies intend to mandate compliance or whether the federal authorities will cede jurisdiction, in appropriate cases, to the Committee on the Unauthorized Practice of Law. All complaints filed with the New Jersey Committee will remain subject to the confidentiality requirements of *R.1:22-1(c)*.

When the Committee exercises jurisdiction it will invoke remedies available under New Jersey rules and statutes, including issuance of cease and desist orders and referral to law enforcement authorities pursuant to *R. 1:22-6(a)*. See *N.J.S. 2C:21-22* in which unauthorized practice of law may be treated as either a disorderly persons offense or a fourth degree crime; and more specifically, *N.J.S. 2C:21-31* prohibiting unauthorized practice of law in immigration matters. The Committee may also refer matters to the Office of the United States Attorney for prosecution or to administrative agencies for further action.