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COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the New Jersey Supreme Court

OPINION NO. 41

Notaries Public and the Unauthorized Practice of Law

This Committee has been asked by several members of the State Judiciary to investigate lay persons who are commissioned as notaries public in New Jersey and whose actions may constitute the unauthorized practice of law. (See *N.J.S.A. 2C:21-22* and *Rule 1.21-1(a)* governing the unauthorized practice of law, and compare with *N.J.S.A. 52:7-10 to 52:7-21*, the *Notaries Public Act of 1979*). Our investigation discloses that some notaries public in New Jersey are performing functions outside the scope permitted by statute and as set forth herein. This Committee has concluded that to prevent future unauthorized practice of law and to give guidance to notaries public and unwary consumers, it is necessary to define the role of a notary public in relation to the unauthorized practice of law.

When a person in New Jersey is commissioned as a notary public, he or she is given a copy of the *New Jersey Notary Public Manual* (New Jersey Division of Revenue). This manual explains the function of a notary and states that a notary is authorized to: administer oaths and affirmations; take acknowledgments; execute jurats

for affidavits and other verifications; take proof of deeds; execute protests for non-payment or non-acceptance. The manual cites the statutory requirement that a notary be 18 years of age or older. A person desiring such appointment must make application on a form prescribed by the State Treasurer who authorizes such appointments. The notary public manual states specifically that a notary public may not prepare a legal document, give advice on legal matters, or appear as a representative of another person in a legal proceeding. Notary fees are set by the regulations and are relatively modest.

We emphasize that the practice of law includes the preparation or drafting of any kind of legal document and the giving of legal advice with regard to any document or matter. (See UPLC *Opinion 40 of the Committee on the Unauthorized Practice of Law*, 176 N.J.L.J. 1195 and 13 N.J.L. 1311, June 21, 2004). Investigations of various complaints by the Committee have revealed that unsuspecting consumers, many of whom are unfamiliar with the English language, have paid substantial fees to persons holding the title of “notary public” to have pleadings, affidavits, briefs and other submissions to the court prepared for them. Misunderstandings may arise from cultural or language differences among consumers, many of whom may not realize that notaries public in this country differ in powers and duties from their counterparts in other lands; the title of notary public may encompass broader duties in other countries where the “notary” may be the equivalent of a legal advocate. (See Milagros Cisneros, *Notorious Notaries – How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 Ariz. St. L. J. 287, [2000].)

Considerable confusion has resulted when notaries in New Jersey have advertised themselves in the language of the potential consumer, with such words as “*notario*.” In Mexico and other civil law countries, “*notario*” has a very different meaning from a “notary public” in the United States. While “*notario*” or “*notario publico*” in civil law countries may be synonymous with “attorney,” in the United States notaries public hold strictly a “witness” position. There have been many victims of “*notario* fraud” because persons come to notaries thinking that they will receive legal advice as they may have received in their native land. (*Id.*, at 299)

The incidence of “*notario* fraud” whether intentional or otherwise perpetrated against persons seeking immigration representation resulted in the enactment of a statute in New Jersey which focuses on the unauthorized practice of law in the immigration area (*N.J.S.A. 2C:21-31*). No such specific statute exists to warn the unwary consumer of the fraud that may occur if a notary who is not an attorney prepares legal documents, such as a complaint for divorce, for a person seeking remedies in a court of law.

In many cases investigated by this committee, notaries public have charged fees for improper services. Many of the fees are in addition to the normal charge for witnessing a signature and are highly excessive considering the permitted “witnessing fee” of two dollars and fifty cents (\$2.50) allowed by law. This Committee has seen incidents of hundreds of dollars charged by notaries to consumer-litigants who were told merely to sign what was put in front of them. They received only a cursory explanation by the non-lawyer notary who had prepared the papers.

Often mistakes of fact or law result from this illegal “representation” particularly when the documents are submitted *pro se* in the name of a consumer-litigant and merely appear to be “witnessed” by the notary. This practice is a disservice to the consumer-litigant whose submissions may be rejected by the court for inaccuracy or insufficiency. Moreover, the papers may result in omissions or errors which impede proper relief.

As stated in UPLC Opinion 40, *supra.*, the “Do-It-Yourself Kits” opinion, “... although ... a non-lawyer seller may assist the purchaser [of Do-It-Yourself kits] by typing, transcribing, or translating, the rendering of any other assistance with the preparation, review, analysis, or completion of materials included in these kits in person, in writing, electronically, or otherwise constitutes the unauthorized practice of law and is therefore prohibited.”

We conclude that it is beyond the scope of the permissible duty and authority of a notary public of the State of New Jersey to give legal advice concerning the preparation of documents, or to perform services other than those approved by statute.

Specifically, the Committee deems it to be an unauthorized practice of law for any notary public of the State of New Jersey to render assistance by giving advice or by preparing, reviewing, analyzing, or completing any forms, writings, pleadings, or other documents in person, in writing, electronically or otherwise.

We recommend that the commissioning authority advise applicants and commissioned notaries public about the contents of this opinion in order to minimize

abuses. In the future, any violation of this opinion called to our attention will be referred by this committee to the commissioning authority or county prosecutor for appropriate action.