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State Bar explores state, federal legislation to forestall immigration fraud

By Don J. DeBenedictis

By this time next month, the State Bar will likely be pushing bills in both the Legislature and Congress aimed at preventing lawyers from ripping off immigrants applying for help under any new federal immigration reform law. Fraud against people seeking green cards or asylum already is rampant, according to experts in the field, and incidents shoot up with every hint of deferred action or other relief. Most believe that will only grow worse if lawmakers adopt comprehensive immigration reform.



The State Bar, said President Patrick M. Kelly, is "trying to get ahead of the problem."

"If you just look at the number of immigrants in California ... who could be taken advantage of ... we need to do something," Kelly said.

Estimates are that a reform law would cover 3 million to 4 million immigrants in California and that several hundred thousand could end up targets of fraud, according to State Bar Executive Director Joseph L. Dunn,

And if hundreds of thousands more immigrants file discipline complaints against their lawyers, the State Bar itself could be hurt, Dunn said. "The potential numbers could paralyze our discipline system and put our Client Security Fund in jeopardy." The fund reimburses clients whose lawyers have stolen from them.

'We know we have to move quickly.' - Joseph L. Dunn

But the bar's anti-fraud effort faces two problems. The first is how to craft laws and rules that make it harder for a lawyer or other immigration practitioner to take advantage of someone unfamiliar with the U.S. legal system.

The second, more immediate problem, is whether any state can impose laws or rules to regulate how federal immigration law is practiced. That is, would a California statute to control California immigration lawyers be pre-empted by federal law?

On that front, Dunn is exploring whether an "anti-pre-emption" amendment could be added to pending reform legislation in Congress. Dunn told a bar meeting last month that he had raised the possibility of such an amendment with Secretary of Homeland Security Janet Napolitano, who said she was open to the idea. He said the

SPECIAL REPORT

In-House Counsel



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Corporate

Lawyers help China-U.S. deals navigate oversight

In recent years, the Committee on Foreign Investment in the United States has played an increasingly prominent role assessing the national security implications of cross-border transactions -- especially those with Chinese companies.

Government

Attorneys frustrated by court cutbacks of settlement officers, mediation services

Many attorneys and litigants have experienced frustrations, including settling on unfavorable terms, as superior courts pare back their alternative dispute resolution services and delay settlement conferences - sometimes indefinitely.

Intellectual Property

Ultramercial wins 2nd patent decision in Federal Circuit

A long-standing patent infringement lawsuit originally filed by Rancho Palos Verdes-based Ultramercial LLC may ultimately provide more explicit guidelines on how to determine the eligibility of software patents.

Litigation

Video game developer's suit can proceed

A federal jury Friday gave a former software developer the go-ahead to pursue claims that he deserves royalties from Electronic Arts' popular John Madden football video games, which he says were derived from his original source code.

Judges and Judiciary

San Diego courts battered by cuts, societal costs "profound," report says

A new report details how cuts have impacted San Diego courts. Published at a time when lawyers are looking to lawmakers for money, the numbers tell a story familiar across the state: courts spiralling into slow-motion and dysfunction.

Mergers & Acquisitions

California firms handle 3-D printer

bar had begun drafting one.

In an interview last week, Dunn said UCI School of Law immigration expert Jennifer Chacon was advising the bar on the pre-emption issue.

"We will eventually reach out to the Legislature and Congress when we have reached conclusions about pre-emption and the regulatory scheme," he said.

"We know we have to move quickly," he added. "I suspect our board will address [this] at its July meeting."

Under its rules, the bar cannot take any formal action on legislation without approval from its Board of Trustees. The board next meets on July 18 and 19 in Los Angeles.

On the remaining problem - what the new state laws and regulations might contain - the bar has the advantage of having gone through something like this before. One reason Kelly wants the bar out in front of looming immigration fraud is what happened when thousands of homeowners facing foreclosure were ripped off by lawyers offering exaggerated promises of mortgage modifications.

This time it wants to be ready, he and Dunn said.

One legislative response to the loan modification crisis was SB94 of 2009, which prohibits anyone, including lawyers, from collecting advance fees for mortgage modification work. But the law has been criticized for effectively driving honest lawyers out of the modification market, leaving only fraudsters.

So to head off immigration fraud, Dunn said the bar is exploring rules that would permit advance fees but require them to be held in client trust accounts. The immigration practitioner then would be allowed to withdraw fees only in stages, as different steps in the client's application process were completed.

Under the bar's idea, fees would not be limited but the "drawdown" of them would be, so as to "minimize running off with them," Dunn said.

He said the legislation might also require fee agreements between immigrants and practitioners to be in writing.

Although the State Bar probably could only enforce new rules against lawyers, the legislation being considered also would cover immigration consultants, notarios and other nonlawyers, he said.

A remaining question is whether state legislation could target those who have already charged high fees to immigrants worried about pending reforms.

"The bar has become aware that there are attorneys actively soliciting funds in connection with the proposition that there's going to be a new immigration law," Kelly said.

Some are even charging clients now for the application and penalty fees the reform law presumably will contain, according to Dunn.

"There are lawyers who are collecting advance fees now," he said. "Should we ask the Legislature to do something about that?"

Mary Beth Kaufman, who is on the board of the American Immigration Lawyers Association's Northern California chapter, said these early bar proposals sound reasonable.

Calling for trust accounts and drawdown limits "seems like an extension of an already existing requirement," said Kaufman of the Law Offices of Stanton & Kaufman. "There could be some resistance by small [firm] attorneys who generally charge flat fees."

But most lawyers in the field will support "steps intended to ensure that clients are not being taken advantage of," she said.

company sale

O'Melveny & Myers LLP is representing 3-D printer manufacturer MakerBot Industries LLC in the company's upcoming sale to Stratasy Ltd. Cooley LLP represented Stratasy. The all-stock deal is valued at \$403 million

Law Practice

On the Move

Labor and employment firm Littler Mendelson PC hired JoAnna Brooks as a shareholder in the firm's San Francisco office from Jackson Lewis LLP.

Intellectual Property

Patent holding company, undaunted by push against it, sues Google subsidiary

Even as government agencies and Congress scramble to take the lead in the fight against so-called patent holding companies, Intellectual Ventures LLC has taken aim again at a Google Inc. subsidiary.

Environmental

Prop. 65 reform moves forward, but some view push with skepticism

State leaders' efforts to overhaul California's controversial hazardous chemical exposure warning law, Proposition 65, is chugging along, but many remain skeptical that the reforms will significantly reduce lawsuits against businesses.

Entertainment & Sports

2nd suit filed over royalties to "Happy Birthday" song

Two Los Angeles plaintiffs have come forward to challenge Warner/Chappell Music Inc.'s ownership of the song "Happy Birthday to You."

Judges and Judiciary

Judicial Council may make e-filing mandatory

The state Judicial Council will consider a proposal to require parties in civil cases file and serve documents electronically.

Government

Twitter in-house lawyer heads to White House

After weeks of speculation, the White House has confirmed that Twitter Inc. executive Nicole A. Wong will join the Obama administration as deputy U.S. chief technology officer.

Natural Resources

Battle for the Colorado River

A court's recent validation of the "quantification settlement agreement" will hopefully ensure the reliability of Southern California's water supply for the foreseeable future. By **Lisabeth Rothman and Amy Steinfeld**

And she heartily endorsed additional regulation of nonlawyers. "I think attorneys in general ... are concerned about notario fraud."

Judy London, directing attorney of Public Counsel's Immigrants' Rights Project, said all levels of government - including the State Bar - must do more with current laws to pursue people preying on immigrants. But she too supported the bar's ideas.

"I think it's a really positive sign that people are thinking about [fraud]," she said.

"Anyone in this business even for a little while has seen the harm. ... Immigration lawyers are definitely on board with trying to address the issue."

Kelly agreed. "We should leave no stone unturned in our public-protection mission."

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Perspective

Valuing privacy violations

A central problem posed by consumer privacy litigation is how to place a dollar value on privacy violations. By **Brian S. Kabateck**

Litigation

Plaintiffs face tough initial hurdles bringing data breach claims

Plaintiffs who have not suffered actual losses from the use of their personal information have had a difficult time surviving the pleading stage. By **Adam J. Thurston**

International

Trend: banning adoptions from countries that have legalized same-sex marriage

A proposed Russian law, for example, would even ban single heterosexuals from adopting if from a nation where same-sex marriage is legal. By **Jennifer Mertus**

Immigration

Crimes and immigration consequences

The objective of this article is to familiarize readers regarding the immigration consequences of state criminal proceedings in California and the 9th U.S. Circuit Court of Appeals. By **Rodin Rooyani and Curtis A. Kin**

Letter to the Editor

Concerns over proposed fee rules are unfounded

Re: "Proposed rules encourage 'sky's the limit' fee gouging," June 17. By **Stanley W. Lampport and Robert L. Kehr**

Litigants entitled to full explanations of decisions

Re: Profile of Justice Stephen J. Kane, June 13. By **Joel Drum**

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Judicial Profile

Arthur A. Gilbert

Presiding Justice 2nd District Court of Appeal, Division 6

Government

State Bar explores state, federal legislation to forestall immigration fraud

If Congress passes comprehensive immigration reform legislation, the State Bar intends to be ready with state laws to target lawyers defrauding immigrants and a federal provision to avoid pre-emption.