

By Karen Nobumoto

Fighting the Unauthorized Practice of Law

We must support proposed legislation that will increase the penalties for this egregious fraud

Consumers in California may soon win needed protection from the growing commerce in the fraudulent delivery of legal services. Earlier this year, State Senator Gloria Romero of Los Angeles introduced SB 1459, which will increase penalties for individuals who present themselves as lawyers when, in fact, they are not licensed to practice law in California.

The unauthorized practice of law (UPL) has been proliferating over the past few decades, and many attorneys, district attorneys, and other law enforcement officials have tried to stem the tide. But as California has grown—and especially as our immigrant communities have grown—the harm caused by the unauthorized practice of law has become more egregious, more blatant, and, sadly, even more destructive to personal lives.

UPL, of course, is not a new issue for lawyers or, for that matter, the State Bar. Public protection has always been the highest priority of the State Bar. The State Bar, however, has limited jurisdiction over nonattorneys who delve into the unauthorized practice of law. It cannot simply extend its regulatory functions to include enforcement against nonlawyers who engage in harmful practices.

What we can do is work with the legislature to increase the criminal penalties regarding UPL. Current law categorizes nonlawyer UPL as only a misdemeanor. This mild prohibition is understandable, as the law was written years ago with the intent of stopping paralegals who sometimes went too far with their good intentions.

This is why SB 1459 is so important. It, in effect, would make a repeat offender who is not an active member of the State Bar or not otherwise authorized to practice law in the state, guilty of a misdemeanor *or* a felony if he or she willfully and intentionally, with intent to defraud, commits either of the following:

- 1) Specified actions indicating that he or she is an attorney or entitled to practice law, or
- 2) Borrows, uses, purchases or appropriates the name, license number, or identity of a member of the State Bar for the purpose of practicing law.

We all recognize that when well-intentioned people are trying to help others, lines are blurred and sometimes crossed. But our sympathy should not extend to the nonlawyer who engages in intentional misrepresentation—the person who, for example, places “esquire” after his or her name on a business card, or willfully and maliciously holds himself or herself out to be a lawyer, or who tells unsuspecting clients that his or her services include appearing in court on their behalf. This is certainly not misdemeanor behavior, and the criminal penalties need to reflect that.

SB 1459 accomplishes this by allowing prosecutors to charge a repeat offender with either a misdemeanor or a felony, which, in turn,

will motivate prosecutors to pursue these criminals. SB 1459 would also help police agencies recognize recidivist behavior because a prior conviction would specify UPL and not, as currently is the practice, a catchall grand theft charge. The sentencing structure would work to deter these miscreants from harming unsuspecting people who believe they are hiring legitimate legal representation.

Those whose unauthorized practice of law Senator Romero is addressing act willfully and intentionally. They knowingly set out to deceive the public. They have not passed the bar. Under current law, one of the only means of prosecuting this form of fraud as a felony is by charging grand theft by false pretenses. But frequently the harm to consumers does not involve an exchange of money in excess of \$400, which precludes pursuing a felony grand theft conviction.

For example, in one of my last cases before becoming State Bar president, I prosecuted an individual for unauthorized practice of law. One of the victims suffered harm that did not result in an exchange of monies exceeding \$400, yet the victim was unable to pursue what he believed to be a legitimate inheritance claim because the defendant never returned the victim’s original documentation.

This is but one example of the type of harm that consumers face when dealing with individuals who intentionally and falsely represent themselves as attorneys. We have heard the egregious stories recounted over and over in the past few years:

- People who give their life savings of \$5,000 or \$10,000 on the guarantee of getting a green card, but who are left facing deportation.
- People who get sucked into the “slow drain”—paying a \$200 fee here, another \$500 there—until they have paid thousands of dollars to the nonlawyer, are out of money, and are no closer to what they are seeking than the day they started.
- People who are attracted to illegitimate businesses because they advertise an inside connection to the Immigration and Naturalization Service.

Too often, the nonattorneys who take this money and who occasionally are caught and have their hands slapped, pay their fines as a cost of doing business and are soon back doing the same thing somewhere else—and to someone else. Lawyers are on the front lines and have seen close up the harm these cases bring. We are well equipped to help change California law to stem this tide. That is why we should fully support Senator Romero’s laudable efforts. ■



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