Bringing Civil Actions Against Notarios

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Notario Fraud: What You Can Do About It

- Report it to law enforcement
- Report it to your state bar association
- Consider Filing a civil lawsuit
Notario Fraud: What You Can Do About It

• Consider Filing a civil lawsuit.
  – Possible benefits:
    • A civil suit empowers the immigrant to seek justice on his own behalf.
    • A civil suit could lead to recovering the money lost by the immigrant.
    • A civil suit could lead to an injunction barring the notario from future fraudulent conduct.
    • A civil suit could, in some jurisdictions, lead to the payment of punitive damages and attorneys fees.
Civil Complaint Considerations

• Thinking about Your Action:
  – Evaluating Your Client
  – Which Defendant(s) to Name?
    • Ability to Satisfy Judgment?
    • Assets?
  – Standing concerns?
  – Injury?
  – What Facts Need to be Developed?
  – State versus Federal Court
  – Jury Versus Bench Trial?
  – Talk to your client about what they want to get out of the litigation!
Civil Complaint Considerations

What legal theories can I allege?

- In most states there are several theories of recovery for notario fraud:
  1. The state’s consumer protection statute
  2. Negligent misrepresentation
  3. Common law fraud
  4. Breach of contract
  5. The unauthorized practice of law
  6. A notario or legal consultant specific statute
Civil Complaint Considerations

1. State consumer protection statutes

   • Almost every state has a consumer protection statute that is modeled, to some degree, on the Federal Trade Commission Act.

   • The statutes are referred to under a variety of names. E.g., the Maryland Consumer Protection Act (“MCPA”), the D.C. Consumer Protection Procedures Act (“DCCPA”), the Virginia Consumer Protection Act (“VCPA”).
Civil Complaint Considerations

1. State consumer protection statutes
   • Although almost every state’s statute provides consumers with a right of action, the statutes do differ in a number of respects often including (1) the elements you need to prove, (2) types of damages you can recover, (3) standing required, etc.
Civil Complaint Considerations

1. State consumer protection statutes
   - In general, however, the elements to bring a deception case under a state consumer protection act are:
     1. A material representation that is likely to mislead,
     2. Plaintiff acted reasonably under the circumstances,
     3. Plaintiff was damaged.
Civil Complaint Considerations

1. State consumer protection statutes
   • What is generally *not* required: proof of the defendant’s intent.
   • What is *not* a defense: a literally true statement if a reasonable consumer could have interpreted the statement differently.
   • How the “reasonableness” of the plaintiff is judged: If a representation is directed at a particular group, reasonableness is examined from the perspective of that group.
Civil Complaint Considerations

1. State consumer protection statutes
   • Many, but not all, state statutes allow the consumer to recover:
     – Damages
     – Punitive damages (or treble damages)
     – Attorneys fees
     – Injunctions
Civil Complaint Considerations

2. Negligent Misrepresentation

– In many states, negligent misrepresentation consists of
  1. A representation made in the course of business,
  2. Which is false,
  3. **Defendant did not exercise reasonable care or competence in obtaining the information or making the statement,**
  4. **Plaintiff relied on the representation.**
  5. Plaintiff injured.
– Recovery is often limited to damages.
Civil Complaint Considerations

3. Common law fraud
   - In many states, fraud consists of
     1. A material representation
     2. Falsity.
     3. **Defendant knew representation was false.**
     4. **Defendant intended plaintiff would rely upon it.**
     5. **Plaintiff acted in reliance.**
     6. Plaintiff injured.
   - Plaintiff may be able to recover:
     • Damages
     • Punitive damages
     • Injunction
     • Attorneys fees
Civil Complaint Considerations

4. Breach of contract
   - In many states, breach of contract consists of
     1. Valid contract
     2. Defendant breached
     3. Plaintiff performed necessary obligations
     4. Damages
   - Plaintiff may be able to recover:
     • Damages
     • Any other remedies provided by contract
   - Considerations:
     • Contracts are often fraudulently induced.
     • Economic loss doctrine may force you to elect between contract and tort.
Civil Complaint Considerations

5. UPL
   – Considerations…
Civil Complaint Considerations

6. State notario / legal consultant statutes

   More than **16 states** have passed statutes that are intended to make it easier to bring suit against notarios / legal consultants. These include (but this is not a complete list):

   - Arizona, California, Colorado, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Washington.
Civil Complaint Considerations

6. State notario / legal consultant statutes
   – The statutes differ by state. An example:

   • Maryland Immigration Consultant Act (“MICA”)
     – Prohibits immigration consultants from:
       » Providing legal services or representing that they have credentials to provide legal services.
       » Legal services include providing forms to an individual, completing forms on behalf of an individual, filing forms on behalf of an individual, advising an individual to file forms, etc
     – Requires immigration consultants to:
       » Provide a written contract.
       » Notify immigrant in writing that they are not an attorney.
     – Penalties:
       » Recovery of fees paid and possible treble damages
       » Reasonable attorneys fees (up to $2,000 or 1/3 of damages)
Recent Case Study

- **Flores v. Ramirez** (Fairfax County Circuit Court)
  - Ramirez told Spanish-speaking immigrants that he was an abogado
  - Flores paid Ramirez $4,000 to post bond for his friend
  - Ramirez never paid the bond
  - Filed claims for:
    - Violation of the Virginia Consumer Protection Act
    - Unauthorized Practice of Law
    - Fraud
  - Related criminal charges for three other victims
  - Settled in January for Money Judgment and Injunction
Recent Case Study

- **Flores v. Ramirez**
  - Complaint Exhibits
Recent Case Study

• *Flores v. Ramirez*
  – Complaint Exhibits

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