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Speaker of the Assembly
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320 W. 4th St., Rm. 1050
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Hon. Kevin De Leon
Senator, 22nd Senate District
1808 W. Sunset Blvd.
Los Angeles, CA 90026

Mr. Patrick M. Kelly
President
State Bar of California
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Los Angeles, CA 90015

Hon. Lorena Gonzalez
80th Assembly District
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Mr. Joseph Dunn
Executive Director
State Bar of California
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San Francisco, CA 94105

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Dear Sirs and Madams:

The American Immigration Lawyers Association¹ (AILA) applauds the California State Legislature and the State Bar of California for their commitment to protecting the state's citizens against immigration fraud, but urges them to reconsider their support for the cumbersome and ineffective proposals contained in the Immigration Reform Act, AB 1159. Instead, AILA calls on legislators and Bar leadership to work with the lawyers and legal services providers who best understand the challenges of meeting immigrant communities' needs, and to recognize that the best way to achieve their goals is not through singling out the immigration bar or legislating the attorney/client relationship.

¹ The American Immigration Lawyers Association is the national association of immigration lawyers and law professors established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA has more than 13,000 members nationwide, including 2,176 in California. Due to the nature of immigration practice as a federal body of law, many AILA members who are not members of the California bar and do not have offices in California would nonetheless be covered by the proposals in this legislation.

Any attempt to reduce fraud in immigration services is laudable, but the approach taken by AB1159 will actually have the opposite effect. Far from preventing unscrupulous lawyers from victimizing immigrants, the proposals in AB1159 will only make it harder for good attorneys and reputable community based organizations to serve these communities, and will do nothing to effectively prevent unscrupulous form-preparers and *notarios* from taking advantage of this vulnerable population.

Equating immigration attorneys with those who operate outside the regulatory system to victimize immigrants is not only flat out wrong, but more importantly, is misguided and misses a real opportunity to combat immigration fraud. Attorneys pass stringent licensing and educational requirements and are already subject to well-established business and professional practices, ethical rules and a robust complaint process. We note that most if not all of the provisions regarding client communications and management are already contained in the California Business and Professional Code, as well as covered by existing rules regulating attorney conduct. It is unprecedented and unwarranted for a state legislature to interfere in the attorney/client relationship at this level, and the one-size-fits-all micromanagement of that agreement neither benefits clients nor protect immigrants from victimization.

In fact, a number of the provisions would actually place a responsible attorney at risk of having to choose between violating the law, and violating the ethical rules she swore to uphold. As drafted, the legislation may even put clients at risk in order for the attorney to comply with the proposed rules. For example, one provision mandating return of documents could mean a lawyer would have to disclose information regarding a victim of domestic violence to the abuser.

The concept that more stringent measures are necessary to legislate a particular area of the legal profession to ensure consumer protection is equally misplaced. The Bar's own reports show that immigration fraud accounts for a miniscule percentage of draws on the Client Security Fund.² Far from being the problem, immigration lawyers are the ones who expose the fraud and pick up the pieces when things go wrong.

While we understand that the California State Bar is still reeling from the loan modification fiasco and wants to do something proactive to protect a vulnerable population, the proposed measure appears to be based on a fundamental misunderstanding of where and when immigration fraud occurs, and the important role the immigration bar plays in protecting consumers. If the ultimate goal is to prevent consumer fraud in immigration and to sanction bad actors, the more effective solution is to focus resources on the enforcement of existing civil and criminal provisions already designed to target the worst offenders. To maximize the impact, this must be coupled with efforts to provide education and guidance to immigrants seeking competent legal assistance. State Bar rules of Professional Responsibility, ethics standards and California's Business and Professions Code have long been the cornerstones of a more than adequate structure to curb unprofessional conduct.

² Neither the bill's drafters nor the Bar have provided any support for their estimates of the rate of anticipated fraud or the amount claims would draw on the Fund, and estimates are grossly out of line with the Bar's own reporting on immigration cases. In fact, the greatest volume of draws appear to be in the area of personal injury, yet Bar officials have taken great pains to target only immigration practitioners, rather than address what appears to be primarily a funding issue with the bar as a whole.

By contrast, gratuitous measures contained in the proposed legislation will only deplete the number of well-intentioned, competent professionals from one of the most humanitarian areas of the practice of law.

The misplaced focus on unprincipled lawyers already operating in violation of the existing regulatory scheme misses addressing the real threat: the victimization of vulnerable immigrants by *notarios* and unscrupulous immigration form-preparers (a fact which is of great concern to law enforcement³ and borne out by the Bar's own reports). The bill places onerous business and procedural requirements on immigration lawyers far in excess of what is imposed on other attorneys in California. The attempt to micro-manage the attorney-client relationship impedes the immigration attorneys' effective representation while the non-attorney perpetrators go undetected and continue to scam immigrants with impunity.

As noted above these requirements are at best redundant and at worst unnecessary, increasing the costs compliant attorneys will face. Rushing into short-sighted proposals to address very real concerns about the potential for large-scale immigration fraud will severely hinder the ability of the private bar and community-based legal assistance providers to serve the legal needs of immigrant communities. An inevitable result of the proposed requirements would make hiring qualified legal help so cumbersome and costly that it will actually drive people *away* from qualified lawyers and legitimate service providers and into the arms of fraudulent practitioners. Nonprofits who rely on outside attorneys to provide assistance will find fewer lawyers able or willing to provide pro bono and low bono services.

As the Bar saw from the loan modification fiasco, well-intentioned laws do not always have their intended effect. When the California Legislature sought to protect an equally vulnerable class of persons facing potential foreclosure by enacting provisions to prevent attorneys from collecting fees early in the process, the new rules drove most legitimate legal professionals away from this area of practice. People had nowhere to go, except to non-attorneys. Foreclosures sharply rose, people lost their homes, and lien-holders lost their money. This is essentially the same model being proposed to deal with the prospect of comprehensive immigration reform, and will likely have similar unintended results.

There is concern that there are not enough qualified legal professionals to address the needs of the immigrant community such that AB1159 will deter lawyers from offering immigration legal services. Experts in the field have noted that increased capacity will be needed to serve the estimated 3-4 million immigrants in California who will need help under federal immigration reform legislation. Furthermore, the effort needed to comply with increased regulatory burdens will make it difficult if not impossible for lawyers who would otherwise offer pro bono or low cost legal services to these communities.

³ André Birotte, U.S. attorney for the Central District, told the State Bar of California's Board that he's concerned there won't be enough law enforcement resources to combat an increase in non-lawyers scamming the vulnerable population, especially if federal sequestration budget cuts continue.

<http://calbarjournal.com/August2013/TopHeadlines/TH4.aspx>

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

At a time when the prospect of large-scale immigration reform has highlighted the need for competent legal help for immigrants, AB1159 would make practicing in this already complex area so much more difficult and provide further disincentives to entering the field.

We have also heard assertions that, if immigration reform becomes law, new practitioners to this area will add to the problem. Nationwide, legal services providers and bar associations are grappling with the reality that there are simply not enough trained immigration professionals to handle the literally millions of cases that might result from reform. Instead of making it more difficult and less attractive to enter into this challenging yet rewarding area of law, the Bar should follow AILA's example of welcoming, mentoring and educating new colleagues. Far from protecting immigrants, these restrictions mean consumers won't be able to find good legal help and will be even more likely to be victimized by unscrupulous form-preparers or *notarios*.

AILA is troubled that AB 1159 does not take into account the complexities of federal immigration law, nor the challenges of its practice. Far from being at the vanguard, the bill has not only missed a great opportunity to solve a problem, but in fact will make it worse. AILA has long held at the core of our mission improvement in the quality of immigration practice, and we have an established a record of enhancing the professional development of our members. Since our founding, AILA has consistently worked to ensure that immigrants have access to competent immigration counsel, in large part to prevent immigrants from being victimized by unscrupulous, under-regulated and often unauthorized operators, who are not trained on the complex nuances of federal immigration law and have little or no professional obligations towards their victims. Among its many efforts to educate and prevent fraud on the immigrant community, AILA has created www.StopNotarioFraud.org, a comprehensive consumer website providing information and resources to immigrants to avoid being defrauded by a *notario*, and where to get help if they are harmed. The website is also available in Spanish at www.parefraudenotarial.org.

The adverse and perhaps unintended consequence of this legislation that needs to be considered is the harmful effect it will have on the consumers who are in most need of qualified legal services– the very population this measure purportedly intends to protect. AILA calls upon the California State Legislature to act responsibly and respond to these significant concerns that such an overly broad bill will have on consumers in the State of California. Accordingly, AILA urges the California Legislature and the California State Bar to work with AILA and other legal services providers to reconsider the legislation substantially or at least prevent its passage in its current form.

Sincerely,



T. Douglas Stump
President



Crystal Williams
Executive Director