



General Assembly
February Session, 2012

Raised Bill No. 5364

LCO No. 1536

01536 _____ JUD

Referred to Committee on Judiciary

Introduced by:

(JUD)

AN ACT CONCERNING THE DEFINITION OF "NOTARIAL ACT".

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (3) of section 3-94a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(3) "Notarial act" or "notarization" means any act that a notary public is empowered to perform under the general statutes

This act shall take effect as follows and shall amend the following sections:

Section 1 *October 1, 2012* 3-94a(3)

Statement of Purpose:

To clarify the types of acts performed by notaries public which are included in the definition of "notarial act".

Underlined only = proposed change in current language previously introduced by CBA in 2011

Underlined and italicized = proposed additional change by CBA this 2012

Underlined, bold and italicized = additional proposed change by Attorney Philip Berns 2012

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CBA Proposal to amend the Unauthorized Practice of Law Statute

Section 1. Section 51-88 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) [A] Unless a person is providing legal services pursuant to statute or rule of court, a person who has not been admitted as an attorney under the provisions of section 51-80, or having been admitted under said section, has been disqualified from the practice of law due to resignation, disbarment, suspension for reason other than the failure to pay the occupational tax on attorneys imposed pursuant to section 51-81b or the client security fund fee imposed pursuant to section 51-81d, or being placed on inactive status, shall not: (1) Practice law or appear as an attorney-at-law for another [,] in any court of record in this state, (2) make it a business to practice law [,] or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself or herself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he or she is a legal practitioner of law, including by the use of any foreign language translation of the word "notary" without, immediately following such use, in the same font size and style, on the same line, and in the same foreign language, a clear and accurate translation of the words "Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law", or (7) advertise that he or she, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

(b) Any person who is admitted to practice law in another jurisdiction and who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who (1) is not admitted to practice law in another jurisdiction or (2) has been disbarred or suspended from another jurisdiction and has not been duly reinstated, and who violates any provision of this section shall be guilty of a class C felony. Any person who has been admitted to practice as an attorney in this state and who has been disbarred or suspended for any reason and has not been duly reinstated, except for an attorney who has been suspended solely for failure to pay the fee required by section 51-81d of the general statutes and who violates any provision of this section shall be guilty of a class C felony. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his or her employment, renders legal advice to his or her employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the

United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his or her employer, but does not include an independent contractor. In any prosecution pursuant to section 53a-8 for an offense under this section and in any prosecution for conspiracy to commit an offense under this section, the state shall have the burden of proving that the defendant had actual knowledge that the person who committed the offense under this section was not authorized to practice law in any jurisdiction at the time of such offense.

(c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.

(d) The provisions of this section shall not be construed as prohibiting: (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office; (2) any person from practicing law or pleading at the bar of any court of this state in his or her own cause; (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or (B) an officer subject to impeachment pursuant to said Article Ninth.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline].

Here are my comments to the HB 5364 (seperate and apart from HB 5147):

1. First, it is a huge improvement over what we have.
 2. Secondly, it is drafted and introduced (hooray!), kudos to those involved.
- having said that ...
3. It should be expanded to include any translation of the word notary, not just Spanish as in pretty much all "civil law" countries, which is pretty much all the non-English speaking world (to a greater or lesser extent), the title notary conveys the same sense of government appointed super-lawyer.
 4. It should require applicants for notary licenses to sign a plain-English statement that they understand they are not permitted to practice law at every point of contact with the Secretary of State's office (application, swearing in, renewals and any others). This certificate, or better yet, sworn statement, should give specific common examples (immigration, divorces, incorporations, etc., and perhaps even go into further detail: it is an unlawful act to tell someone which forms to fill out, or what the steps of the process are, etc.)
 5. Neither the proposed bill nor §51-88 specifically prohibit the use of the word "notary" in English in conjunction with oral or written claims to assist with immigration, divorces, incorporations, etc.
 6. Perhaps contradicting some of the ideas above, prohibiting the use of the word "notario" or any other translation, will make it impossible for such people to advertise any notarial services to the immigrant communities, limited though notary services may be. The result is that they will continue to use the foreign translations sub rosa, driving such activities further underground. The alternative, requiring an explicit explanation of what a notary is and isn't at each instance of use of a foreign translation (for example, "Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law") forces them, when they inevitably communicate to their clientele, to communicate fully what it means and doesn't mean.
 7. Second and subsequent violations should be enhanced to felonies §51-88 only provides for misdemeanor punishments; two hundred and fifty dollars or imprisoned not more than two months or both. I am told that law enforcement will continue to show little interest unless there is something to sink their teeth into.
 8. For the same reason (law enforcement having little interest in such misdemeanors), the Secretary of State's own office and/or Chief Disciplinary Counsel's office should be given powers to pursue prosecution. At the very least the SOS's office should be explicitly given the power to threaten to pull licenses and pull licenses, a power I have been informed it does not feel it has now. It should further be empowered to publish such disciplinary actions in the local media and encouraged to send out press releases to such media to generate interest in the problem, encourage more victims to step forward, and create a climate of intolerance for these abuses.

That's my two cents. I have also attached some additional materials that might be helpful in crafting a bill that might hit the nail more firmly on the head.

Phil Berns
203 722 0488

Legislative concept to deal with notary abuses of notary licenses and UPL statutes (draft 2/9/12)

WHEREAS in the English-speaking world the word 'notary' has a very limited meaning. In the rest of the world, the title 'notary' (for example, 'notario' in Spanish or 'notaire' in French, etc. throughout Europe, Africa, Asia and Latin America) has much greater significance and involves greater training and experience and includes the same powers as an attorney and more. Here in the State of Connecticut, especially in the Spanish-speaking community but also exists elsewhere, the foreign language translation of the word 'notary' (for example 'notario' and 'notaire' as described above) is being used to either deliberately mislead people into believing that the Connecticut notary has greater powers than they do or, unintentionally and/or passively end up doing so anyway.

WHEREAS it is the widespread experience of attorneys licensed in the state of Connecticut that many notaries are involved in the unlawful practice of law (UPL) and that they tend to fall into one of two categories:

1. those that are extremely abusive and are charging three, five and 10 times more than legitimate attorneys are charging for the same legal services, they usually promise results that frequently are unattainable, and often end up putting people in a far worse situation than they started out in; and
2. notaries who in fact make an effort to study the law, charge half or a third of what a legitimate attorney would charge for similar legal services, and, while they frequently get things right, sometimes get them wrong and in any case are practicing law without a license in the State of Connecticut.

WHEREAS it is the state of Connecticut that issues the notary licenses that are then frequently abuses;

Therefore, we have come up with some of the following ideas:

1. that any use of a foreign language translation of the word 'notary' should include immediately following such use, in the same font size and style, on the same line, and in the same foreign language, a clear and accurate translation of the words **"Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law"**
2. the Connecticut governmental office that issues notary licenses is the Secretary of State's Office; while they are the only ones with the power to issue notary licenses, it is their interpretation of the law that they do not have the authority to:
 - a) threaten to revoke a license; or
 - b) revoke licenses

We propose that the Secretary of State's Office be required to:

a) require applicants in their initial application to make a sworn statement that they will not practice law unlawfully without a license and include specific examples, such as "I understand that I cannot offer to prepare divorce papers, immigration forms, incorporation papers, etc. and that to do so constitutes the criminal activity called Unlawful Practice of law and is a violation of numerous state statutes, including, but not limited to, the Connecticut Unfair Trade Practices Act."

b) that the applicants make the same sworn statement at the time they take the notary test

c) that every several years when they renew their licenses that they again make a sworn statement that they understand that the law prohibits these things and they are not doing it

3. We propose that the Secretary of State's Office be given the power to:

a) send warning letters to notaries for whom they have any evidence that may be practicing law without a license. Such evidence would include something as simple as an advertisement, a sign on their property, or legal documents or forms signed by them or listing their address.

b) upon sufficient evidence, impose a wide range of disciplinary actions, including the power to suspend and revoke licenses, publish notices in the media about the revocation of a notary's license, etc.

4. Because the unlawful practice of law is only a misdemeanor and not a very dramatic crime here in the State of Connecticut, law enforcement in the State of Connecticut, with the exception of the Chief Disciplinary Council's Office, are reluctant to bother to investigate or to prosecute this crime. In fact, in the experience of at least one person at the Chief Disciplinary Council's Office, there had to be extensive evidence of extreme abuse involving hundreds of thousands of dollars before local police in Stamford moved against an abusive notary in Stamford and even then, he was put on probation and went right back to business as usual with few consequences.

We therefore recommend that a second violation of the unlawful practice of law statutes be considered a felony.

Sincerely yours,

Philip Berns



General Assembly
February Session, 2012

Raised Bill No. 5147

LCO No. 948

00948 _____ JUD

Referred to Committee on Judiciary
Introduced by:
(JUD)

**AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW BY
NOTARIES PUBLIC.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2012) (a) A notary public shall not offer or provide legal advice to any person in immigration matters or represent any person in immigration proceedings unless such notary public (1) has been admitted as an attorney under the provisions of section 51-80 of the general statutes, or (2) is authorized pursuant to 8 CFR 292.2 to practice immigration law or represent persons in immigration proceedings.

(b) A notary public shall not assume, use or advertise the title of notario or notario publico, unless such notary public has been admitted as an attorney under the provisions of section 51-80 of the general statutes.

(c) Any notary public who violates any provision of this section shall have committed a violation of subsection (a) of section 51-88 of the general statutes and be subject to the penalties set forth in subsection (b) of section 51-88 of the general statutes.

This act shall take effect as follows and shall amend the following

sections:

Section 1

October 1, 2012

New section

Statement of Purpose:

To clarify that notaries public may not (1) offer legal assistance in immigration matters unless they are attorneys or otherwise permitted to provide assistance in such matters pursuant to federal law; or (2) falsely convey the impression that they are attorneys by use of certain titles.

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*immigrants
franchise
(there is none)*

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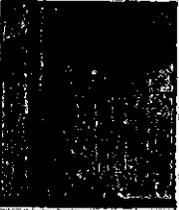
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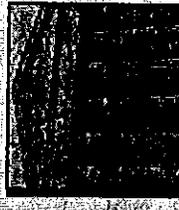
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Monday, February 13, 2012. @ 2:07pm

asked me to call these numbers from EL SOL newspaper and ask the following questions on 02/13/12 11:45am. Here are the notes on the conversation :

tel: 203 505 5606
115 West Main St. S.2
Stamford

Q: Do you do IMM papers?
A: Yes, we do citizenship, filing applications, applications for petitions, and renewals.

Q: Do you have a notario?
A: Yes, we have next day notario.

tel: 203 354 4916
1211 East Main St.
Bridgeport

Q: Do you do IMM papers?
A: Yes, we do IMM filing, petitions, and renewals.

Q: Do you have a notario?
A: Yes.

I only called these two numbers, and did not call any other numbers on the advertisement.

February 13, 2012: printed this.

*Frank Papp
Office of Newspaper Advertising
The Hartford
in a letter to the editor*