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ADVERTISING INDEX

ALLISON MACKENZIE PAVLAKIS	JACKSON LEWIS	35
WRIGHT & FAGAN	JAMS	23
AMERICAN ARBITRATION	KOLESAR & LEATHAM	26
ASSOCIATION	LA VOZ	27
13	LAW PAY	IFC
AZA ATTORNEYS	LEGISLATIVE COUNSEL BUREAU ...	BC
30	LEWIS & ROCA	17
BALLARD SPAHR	MARSH	11
9	NACJ	14
BANK OF NEVADA	NEEMAN & MILLS	37
36	NEVADA STATE BANK	20
CHARLESTON INSURANCE	ONE PROMISE NEVADA	31
18	PARSONS BEHLE & LATIMER	14
CLARK COUNTY BAR ASSOCIATION ...	PIERCY BOWLER TAYLOR & KERN ...	43
39	RIGHT LAWYERS	12
COGBURN LAW OFFICES	STATE BAR OF NEVADA ...	15, 19, 52, 53
47	TRANSITIONING INTO PRACTICE	40
CRAIG P. KENNY	VERITI CONSULTING	21
48	WILSON ELSER MOSKOWITZ	33
CYBERSLEUTH'S GUIDE		
TO THE INTERNET		
42		
DE CASTROVERDE LAW GROUP		
15		
FASTCASE		
12		
GAMING LAW SECTION		
34		
GORDON & SILVER		
19		
GUNDERSON LAW FIRM		
32		
HOLLAND & HART		
41		
HOWARD & HOWARD		
28		
HUTCHISON & STEFFEN		
7		

Message from the President

By Alan J. Lefebvre, Esq., President, State Bar of Nevada



LOST IN TRANSLATION: NEVADA NOTARY PUBLIC V. MEXICO'S NOTARIO PUBLICO

In its last session, the Nevada Legislature enacted AB 74, which is, indirectly, an attempt to bring order to a transplanted legal station under Mexican law, that of notario. The legislation should affect notarios, who are using the imported concept, perhaps to adverse effect, in the U.S. The new Nevada statute regulates “document preparation services,” something that sounds vaguely like the unauthorized practice of law. This new law also affects the practice of law, and challenges the organized bar.

Despite present currents in the political tide, changes in immigration law are afoot and will come about through successful legislation or executive fiat. Those changes will most likely mean that a large swath of our population will be enticed to engage notarios, and not lawyers, to meet their legal needs in securing legal immigrant status.

If you are not familiar with notarios, drive down Las Vegas' East Fremont or Charleston streets and have a look. There you will see, firsthand, the equivalent of feral paralegals operating notoriously, in the open. Their lawns contain advertising for legal services aimed at the immigrant population: ads that may draw in those who feel more comfortable with a concept imported from home, ads intended to lend assurance. Should these lawn signs be an assurance or a warning of danger?

The Confusion

The differences between a U.S. notary public and a notario publico are profound. It is easy for the casual observer to confuse the roles of the Mexican notario publico with the limited services offered by a notary public in the U.S. Confusion is several steps removed from deception. In Mexico, a notario is a licensed legal professional. There is no legal regulation in Nevada, per se, so use of the term is deceptive to the consumer of legal services.

Comparison

A candidate to be a notary public must:

- Fill out an application
- Be at least 18 years of age
- Be a legal resident of the state in which they are applying
- Be a legal resident of the United States or a permanent resident alien
- Pay applicable fees and post a \$2,500 dollar bond

In the Federal District of Mexico, a notario publico candidate must:

- Be Mexican by birth
- Be older than 25 but younger than 60
- Be in good health
- Have a good reputation
- Not be the leader of a church
- Not have a criminal record
- Have studied under a notary for at least six months prior
- Take a written exam
- Be a legal professional with the title of lawyer

Mexico City has a population of 9 million people and is served by only 243 notario publicos. Even if a candidate has met the above qualifications and scored well on the written exam, a position is far from guaranteed, as new positions are available only when there is a vacancy.

Roles Differentiated

A notary public may:

- Take acknowledgements;
- Protest instruments;
- Administer oaths;
- Take depositions;
- Certify copies of documents not recordable in the public records;
- Show that a disinterested party duly notifies the validity of a document; and
- Show that the signer is, indeed, who s/he says s/he is and that his/her reasons for signing are genuine.

A notario publico in Mexico City may:

- Be an arbitrator;
- Be a mediator;
- Issue judicial opinions;
- Intervene in judicial proceedings;
- Ensure payment of taxes;
- and more.

In Mexico, the incorporation of every company, the buying and selling of all types of real estate, the establishment of deeds and wills, and the creation of mortgages, among other transactions, must be protocolized by a notario publico. It is the notario publico's responsibility to labor over the document and make sure it is in conformance with the law. In many respects, the Mexican notario publico serves not only as a lawyer but also as a judge in his or her role as protector of the law. For example, next to the notario publico's signature on a document is the phrase "I Give Faith" (Doy Fe).

This is very distinct from the Nevada system. A Nevada notary public's primary duty is to verify a signer's identity and signature, and attest that the signer personally appeared before the notary at the time the notarization was taken. The notary is not verifying the truth of the statements in the document. The individual appearing before the notary and signing the document is responsible for the truth of such statements. The notary is only responsible for the truth of the statements in the notarial certificate that the notary completes, which says the person appeared before the notary and that such person signed or acknowledged his signature on the document on a specified date.

The New Legislation

Prior law, NRS 7.285, prohibits a person who is not an active member of the bar from engaging in the practice of law. The new law, AB 74, recognizes the current lawlessness and finds its justification in the current notario practice of providing "legal assistance" to another person. AB 74 sanctifies the position of one who provides "legal assistance," not under the supervision of a lawyer, and gives them a name: document preparation service.

In essence, this legislation permits a Legal Zoom-like service to operate in person rather than just online and vests prosecution of the unauthorized practice in the hands of the Secretary of State and eventually the Attorney General. Look for more information about this legislation in a future issue.

Conclusion

The principal difference between the Mexican notario publico and a Nevada notary public is that the Mexican notario publico is responsible for the legality of the content of a document, while the Nevada notary public only certifies the identity of the signer. AB 74 will enter into territory that the bar and law enforcement have left unregulated, hopefully to good effect. ■

Questions? Comments?

Nevada Lawyer welcomes feedback from our readers! Contact us at nvlawyer@nvbar.org.