

# Competing for

BY STEVE TOBOCMAN

In 2004, Michigan's immigrant community and the lawyers who serve it welcomed the implementation of two critical laws passed during this past legislative session. Michigan joined a handful of other states and cities around the country in establishing legal mechanisms to target non-attorneys who are abusing and profiting from immigrants seeking assistance with immigration matters. These laws seek to end a particularly heinous form of consumer abuse that preys upon a vulnerable, low-income population and not only takes its meager earnings, but often results in the separation of families and unnecessary deportation of persons with legitimate claims to reside in the United States.

The laws represent one of the first victories in several years for legislation that was championed by legal services providers and consumer advocates. They reflect a spirit of bipartisanship and, to that extent, suggest that an era of split government (with Democrats controlling the Governor's office and Republicans the state legislature) might offer exciting opportunities for good policy-making.

## The Problem

With over 50 separate legal residency statuses and a rapidly changing post-9/11 world, immigration law is a complex nexus of statutory and administrative law that is very fact-intensive with regard to the immigrant's particular situation. There rarely is a black letter rule, specific form, or single fee that can simply be applied to determine an immigrant's residency status. An immigrant's length of residence, family connections, work and tax history, method of entry, and other factors all help to predict the final

outcome of an immigration hearing. Unfortunately, because of this area of law's complexity, as well as the size, need, language barriers, and lack of resources of Michigan's estimated 37,000 undocumented persons, legal assistance is often unobtainable. Enter the non-attorney profiteer.

They exist in every immigrant community, especially among those for whom English is a second language. Their methods vary with the nature of the immigrant's needs and abilities. Some even possess a genuine desire to help people but have harmed immigra-

tion claims inadvertently. The most common transactions are those by persons who provide an array of bilingual services to a particular immigrant community. These services might include translating documents, wiring money to homeland relatives, notary services, and job placement. "Immigration assistance" is a natural outgrowth for these neighborhood businesses. Unfortunately, because of the complexity of residency applications and the importance of the final outcome of an application, non-attorneys (who usually operate without any formal training or experience) often make mistakes, miss deadlines, file incorrect claims, or provide advice that causes the immigrant tremendous harm that could have been avoided and that costs hundreds or thousands of dollars.

Some of the most egregious scams are reportedly targeted at migrant farmworkers. Knowing the vulnerability of many of the workers who do not have proper documentation, a person will enter the migrant camps and befriend the workers. After earning their trust (often with free food and beer or transportation) over the course of a few weeks, the scam artist will tell the migrant worker that he or she can attain legal residency. After getting several workers to pay for his or her services, this scam artist will leave town with little fear that this vulnerable population will approach the legal authorities to complain.

More common is the established business in an immigrant community that seeks to legitimize its "immigration services" by hiding behind official-sounding titles, such as *notario publico* in Spanish-speaking neighborhoods.

# Immigrants



***Michigan's  
New Consumer  
Protection Laws***



While a literal translation of each word suggests that this term is the Spanish equivalent of the English “notary public,” *notario publico* is used in Mexico and other Latin American countries to refer to a licensed attorney given special authority by the government in certain legal matters. Other, less obvious false interpretations of a business’s notary public status exist in other immigrant communities.

### The New Tools

The long-term solution to the tremendous consumer fraud and abuse problems faced by immigrants in Michigan and throughout the United States is to increase access to affordable legal assistance. While I encourage readers to redouble their efforts to assist the State Bar of Michigan’s Access to Justice initiative and lobby for increased levels of federal funding for legal services, the availability of legal assistance from nonprofit immigration law programs like Farmworker Legal Services and those of the Diocese of Kalamazoo, the Archdiocese of Detroit, and other pro bono sources barely scratches the surface. In the interim, the Michigan Legislature saw fit to adopt some basic consumer protections in 2004.

### Limits on Notaries Public and Misleading Advertising

The Michigan Notary Public Act<sup>1</sup> went into effect on April 1, 2004. The act, sponsored by State Representative Shelley Taub (R–Bloomfield Hills), was written to modernize Michigan’s laws governing notaries public, which had not seen significant changes in over 50 years. Working with individual members of the State Bar’s Notario Task Force, I submitted an amendment to the bill that included provisions from the Model Notary Public Act governing the usage of *notario publico* and similarly misleading descriptions. Specifically, § 31(3)<sup>2</sup> of the act states that a “notary public shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.”

This prohibition would seemingly target abusive notaries public head on. Unfortunately, the problems experienced in immigrant communities can be subtle because of the confusion over foreign-language terms,



## FAST FACTS

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such as *notario publico* and other terms that imply that the notary public has powers and skills similar to those of an attorney. Therefore, § 31(4)<sup>3</sup> of the act, which also was borrowed from the Model Notary Public Act, states that a notary public shall not “literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.”

Finally, § 31(5)<sup>4</sup> of the act requires that a disclaimer be added to all advertising in a language other than English stating that the notary public is “not an attorney and [has] no authority to give advice on immigration or other legal matters.” The act gives the Secretary of State the authority to investigate complaints made by the general public for violations of these and other provisions.<sup>5</sup> It also allows the Secretary of State to impose a civil fine of up to \$1,000, require restitution to aggrieved persons, and revoke a violator’s appointment as a notary.<sup>6</sup>

### Michigan Immigration Clerical Assistant Act

A more ambitious attempt to stem the tide of abusive immigration practices was embodied in the Michigan Immigration Clerical Assistant Act (MICA),<sup>7</sup> which I sponsored, and its companion bill, 2004 PA 162, sponsored by State Representative Bill Huizenga (R–Zeeland). This bipartisan package re-

flected more than three years of work by the State Bar’s Notario Task Force. The final bills were endorsed by the State Bar, the Michigan Chapter of the American Immigration Lawyers’ Association (AILA), the Hispanic Bar Association, New Detroit, the Arab Community Center for Economic and Social Services, Jewish Family Services, the Immigration Assistance Program of the Diocese of Kalamazoo, the Immigration Legal Services Program of the Archdiocese of Detroit, Freedom House, several other immigration advocacy groups, legal services providers, and some of Michigan’s largest corporations.

These new laws place Michigan alongside a handful of progressive states that have taken broad legislative action to curb abusive practices in the provision of immigration services. Enacted with the benefit of observations of a few of these efforts in practice, the statutes opt for a registration system with strong penalties for prohibited practices instead of a licensing regulatory scheme. States like California that have instituted licensing have struggled with developing appropriate training and testing systems to ensure the licensee is skilled, as well as the problem that the license, which is intended to authorize a small scope of services, provides a form of endorsement that has actually been exploited by some licensees to broaden their abusive practices.

MICA is a relatively detailed and extensive statute and deserves to be reviewed on its own. In general, it seeks to restate the

limitations that exist in the current rules concerning unauthorized practice of law by non-attorneys who assist immigrants. It mandates that non-attorneys who are assisting immigrants for profit (1) register with the Department of Labor and Economic Growth (DLEG),<sup>8</sup> (2) pay a registration fee,<sup>9</sup> (3) obtain a surety bond,<sup>10</sup> (4) limit the fees they charge consumers,<sup>11</sup> and (5) provide standard contractual disclaimers in the immigrant's native tongue.<sup>12</sup>

Information about registering with DLEG can be obtained on the Internet at <http://www.michigan.gov/immigrationclerical>. MICA does not apply to attorneys, those working under an attorney's direct supervision, family members, church members or others who are not charging for their assistance, nonprofit or other organizations recognized by the Board of Immigration Appeals, designated school officers, or businesses that have an ongoing employment relationship with an immigrant.<sup>13</sup>

Penalties for abuses under MICA can be severe.<sup>14</sup> A first conviction is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of up to \$1,000, or both. Subsequent convictions are felonies punishable by up to two years of imprisonment or a fine of not more than \$10,000, or both. Initial violations of the registration and bonding requirements, however, only subject the violator to a notice of noncompliance from DLEG. Victims also may bring civil suits for equitable relief or damages, but experience suggests that victims are unlikely to come forward because of their precarious residency status and their own cultural experiences working with the courts in their homelands.

Precisely because victims will likely be unwilling to pursue violators, MICA contains a so-called private right of action that allows any person to bring an action for equitable relief on behalf of the general public against an abusive immigration services provider.<sup>15</sup> It is anticipated that pro bono immigration legal services providers, immigration advocacy organizations, churches, and mosques will work to identify chronic abusers within local communities to target under the private-right-of-action provision. In fact, some legal services providers, such as the Michigan Migrant

Legal Assistance Project in western Michigan, have a significant history of using Michigan consumer laws and the unauthorized-practice-of-law regulations to crack down on the most abusive providers. On a few rare occasions, they have been able to shut down such businesses, but they are eager to use the more direct, more powerful, and clearer provisions of MICA.

In addition to efforts to use MICA's private-right-of-action provision, immigration advocates see the passage of these two new laws as an opportunity to educate immigrants about their rights and the potential damage that can be done by seeking immigration assistance from unqualified persons. The Notario Task Force has developed posters in Spanish to warn immigrants of the difference between notaries public and licensed attorneys.

With overwhelming support in both the Michigan House of Representatives and Senate, these two legislative initiatives send a signal that Michigan welcomes and values the contribution of immigrants. Michigan understands that it cannot compete in the global economy without a diverse, multilingual workforce that includes immigrants and all that they bring in terms of language skills, cultural knowledge, connections, talent, intelligence, hard work, and ambition. Michigan cannot be a dynamic place to live, work, and play if it does not have a wide-ranging array of cultural and social offerings, food, and activities. Governor Granholm's support of these acts represents her recognition that not only is money needed for "cool cities," but also the people who make them cool.

It is important to note that these legislative initiatives were championed and embraced by members on both sides of the legislative aisle. MICA, in particular, was the product of intense work during its development. It was drafted and re-drafted at least seven times on the basis of input from the Granholm administration, a House Republican committee chairman, AILA, pro bono immigration lawyers, colleges and universities, immigrant rights groups, and Michigan Fortune 500 companies. It reflects compromises and intricacies to ensure that dozens of competing interests and goals were satisfied.

These legislative initiatives reflect one of the first victories that legal services supporters in Michigan have had in some time and one of the few victories immigration advocates have had in the post-9/11 world. These efforts succeeded because Democrats and Republicans worked together. A state legislature dominated by Republicans simply cannot develop policy without the support of a Democratic governor. Similarly, a Democratic legislator cannot develop legislation without support from the majority Republican party.<sup>14</sup> In the end, these legislative initiatives suggest that, despite some of the recent rhetoric, Michigan residents might be able to look forward to the coming legislative session as a time when good public policy will be made on a bipartisan basis. In fact, bipartisan policy initiatives may be the only efforts that succeed in this era of divided government. ♦



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## Footnotes

1. 2003 PA 238, MCL 55.261 et seq.
2. MCL 55.291(3).
3. MCL 55.291(4).
4. MCL 55.291(5).
5. MCL 55.300.
6. MCL 55.300a.
7. 2004 PA 161, MCL 338.3451 et seq.
8. MCL 338.3454.
9. MCL 338.3459.
10. MCL 338.3465.
11. MCL 338.3461.
12. MCL 338.3463.
13. MCL 338.3455.
14. MCL 338.3471.
15. MCL 338.3471(3).
16. The 92nd Legislature (2003–2004) reflected the largest Republican majority (63–47) in Michigan since Franklin D. Roosevelt was president of the United States.