

PRESIDENT'S PERSPECTIVE

THOMAS H. PROL

Offering Information and Guidance for all Attorneys on Immigration Law Issues



As I pass the midway mark of my tenure as president of the New Jersey State Bar Association (NJSBA), I take a moment to reflect on the association's commitment to diversity through a better understanding of immigration law.

The NJSBA remains committed to improving the profession in every arena. One of the most compelling areas of law for the NJSBA, and for me, is the evolution of the unauthorized practice of law (UPL), which impacts many practitioners beyond immigration attorneys.

The association's Immigration Law Section has taken several steps to examine ways to enhance the penalties against those who conduct the unauthorized practice of law, subject to approval by the Board of Trustees. One path it is examining is possible legislative amendments to N.J.S.A 2C:21-22. The proposal would address *notarios* and unlicensed persons acting as attorneys who do great harm to New Jersey residents through fraudulent application and petitions, or with filings that do not meet basic standards.

During the past year, the section has also hosted two important panels addressing the unauthorized practice of law. It recently brought together a panel of representatives from the Administrative Office of the Courts, the U.S. Attorney's Office in Newark, the Fraud Detection and National Security Unit from U.S. Citizenship and Immigration Services, and the New Jersey Department of Consumer Affairs.

While we shine a light here on the efforts of the Immigration Law Section, it is critical to keep in mind that these issues are not constrained to immigration law attorneys. Practitioners besides immigration lawyers should become more sensitized to immigration issues and the ramifications they pose to their clients' legal rights.

As a sandwich jurisdiction that is geographically situated between two of the largest cities in our country, New Jersey has become a sophisticated and sometimes challenging environment for immigrants and their legal rights. The interplay of state and federal laws are often in conflict, and these conflicts in law can lead to complaints, malpractice claims, attorney discipline, and a plethora of other concerns for lawyers.

Family lawyers—are you aware of the impact that a divorce may have on a person who is not yet a U.S. citizen, and the burdens divorce may place on the non-citizen spouse? Can an undocumented parent be a custodial parent? What if that custodial parent is at risk of being ordered removed from the United States or is at risk of removal proceedings? Why is it that financial affidavits of support requirements for foreign nationals continue after a divorce? What about the cause of action for a divorce in a complaint for divorce?

The wrong cause of action can have profound implications and unintended detrimental consequences for your client. Furthermore, we've all heard of sham marriages for purposes of immigration benefits, but what about sham divorces? What are the warning signs for either a sham marriage or a sham divorce, and what risks are presented by your (hopefully unwitting) participation in your client's efforts in that regard? Could there be a malevolent basis for the filing of a temporary restraining order by a non-citizen spouse, and how could the defense attorney cross examine the complainant in such a case?

Similar warnings are true for criminal law practitioners. There is a minefield in pre-trial interventions (PTI) that let your client walk free because they are fraught with traps for non-citizens. A plea colloquy is tantamount to a conviction for purposes of immigration court and immigration agencies, *despite* a future criminal dismissal. The very failure to consult with an immigration attorney can and has led to thousands of deportations due to collateral consequences with immigration law, even with PTI. A great deal for a U.S. citizen

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being done in New Jersey to meet this need. Alexander Shalom discusses the right to a public school education for immigrant students. Alan J. Pollack focuses his article on recent developments in the treatment of crimes of domestic violence under the new immigration law.

Jillian Stein offers considerations for criminal practitioners in cases involving noncitizens and possible alternatives to avoid unwanted immigration consequences. Michael Noriega offers a commentary piece that discusses bail reform and its effects on immigration law.

Edward Shulman considers the consequences of marital separation on conditional permanent residency. Susan Roy discusses issues that can arise in birthright citizenship cases and the current state of the law in this area.

Finally, George Tenreiro reviews executive action and immigration reform moving forward in 2017.

We are grateful to each of the authors for sharing their knowledge and time in making this edition diverse and topical.

We would also like to thank Cheryl Baisden, our managing editor, for her dedication, unwavering commitment and helpful insights.

Undeniably, immigration issues are a very hot topic in New Jersey as well as the country and throughout the world. There is no shortage of ideas on how to fix the system. It will be interesting to see what changes the future brings as 2017 progresses. ☺

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is often a disaster for foreign nationals. And that expungement that helps many Americans obtain a clean slate has little to no impact for foreign nationals, other than destroying critical police records that may be necessary for your clients in immigration agencies and courts.

As you study the articles included in this edition of *New Jersey Lawyer*, please keep in mind that this is but a start to help you understand the important interplay of practice areas with immigration law. The NJSBA is committed to informing and guiding its members about how to best represent clients in the most proactive ways possible, and I hope this offers a meaningful contribution to that education. ☺



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