



1663 Mission Street
Suite 602
San Francisco
California 94103
Tel 415.255.9499
Fax 415.255.9792
Email ilrc@ilrc.org
<http://www.ilrc.org>

1395 Bay Road
East Palo Alto
California 94303

Reply to
San Francisco ✓
East Palo Alto

Advisory Board
JOHN BURTON
NANCY PELOSI
CRUZ REYNOSO

Board of Directors
RICHARD BOSWELL
BILL ONG HING
SALLIE KIM
GUADALUPE SIORDIA
ORTIZ
MARIBEL DELGADO
OSBORNE
C. MATTHEW SCHULZ
LISA SPIEGEL
LYNN A. STARR
A. LEE ZEIGLER

Staff
SUSAN LYDON
Executive Director

BILL ONG HING
General Counsel

KATHERINE BRADY
MARTHA CHAVARIN-
ROMERO
ERIC COHEN
EVELYN H. CRUZ
MARK SILVERMAN
Staff Attorneys

SHELLA BRENNER
Development Director

LISA GONZALVES
Program Coordinator

CAROLYN HANRAHAN
Finance Manager

JONATHON HUANG
Computer Systems Coordinator

SHARI KURITA
Assistant Director

HOLLY LANDSBAUM
Development Coordinator

ELIZABETH ROMERO
Program Assistant

HOW TO SUE AN IMMIGRATION CONSULTANT IN SMALL CLAIMS COURT

BY EVELYN H. CRUZ & KATHY BRADY ¹

I. INTRODUCTION

Over the past 10 years, dishonest immigration consultants have committed widespread fraud against immigrants. Many immigrants, both legal and illegal, have turned to immigration consultants for help with INS and Immigration Court forms, only to lose their money, their documents, and often their only chance for legal status in this country.

California law provides for penalties, fines, and even jail sentences for immigration consultants who commit certain kinds of fraud or do not obey state law rules. It also provides for money damages to people who have been harmed by the acts of immigration consultants.

We want to emphasize that many immigration consultants are competent and honest, and provide a critically important service to immigrants who either cannot afford an attorney's assistance, or do not have an immigration attorney in their community. Further, some attorneys also can be dishonest or incompetent to handle immigration cases. While this booklet will focus on immigration consultants, it is important to ensure that whoever handles your immigration case is competent and honest, whether the person is a consultant or an attorney.

The purpose of this booklet is to outline what rights clients have and what legal responsibilities the immigration consultants have. We hope that it will be helpful as you seek help from an immigration consultant. Also, if you have been harmed by the illegal actions of an immigration consultant, this booklet shows you how to get help. The focus will be on how to sue the consultant in Small Claims Court, but the booklet also contains information about other kinds of legal action that you can take.

¹ Special thanks to Phyllis Beech and Jean Lin who assisted in the writing of this manual.

II. WHAT IS AN IMMIGRATION CONSULTANT?

California law governs non-lawyers who offer non-legal assistance in immigration matters in California. These non-lawyers are referred to as “immigration consultants.”

An immigration consultant does not necessarily practice with an office, business suit, and plaques on the wall. The practice can take many forms and the setting can be anywhere from an office to a church to meetings at the clients’ home or workplace. In some cases, immigration consultants have rented hotel rooms for one-day visits to a city, advertising the event by distributing flyers in neighborhoods where immigrants were likely to reside.

The California Business and Professions Code governs what immigration consultants are permitted to do and what duties they owe to their clients. If the consultant does not obey the law, clients have rights to sue. Section 22441(a) of the California Business and Professions Code defines an immigration consultant as a non-lawyer who provides “nonlegal” assistance or advise on an immigration matter. Nonlegal assistance includes, but is not limited to:

- ◆ completing federal or state forms “but not advising persons as to their answers on those forms”
- ◆ translating answers to questions posed on those forms
- ◆ helping clients obtain the supporting documents, such as birth certificates, necessary to complete the forms;
- ◆ submitting completed forms to the INS
- ◆ making referrals to persons who can provide legal representation

The California Business and Professions Code also provides that a person who has violated any of the California laws governing immigration consultants:

- ◆ May be sued to stop his or her illegal practices: This is legally known as an injunctive relief. This type of case can only be brought in Superior Court.
- ◆ May be sued for actual damages (the money that the victim actually lost) plus treble damages (three times the actual damages), or \$1,000, whichever is more;
- ◆ May be forced to pay a civil penalty to the state of up to \$10,000 for each violation of the law (Superior Court only).
- ◆ May be prosecuted in criminal court by a District Attorney.

III. WHAT ARE YOUR RIGHTS WHEN DEALING WITH AN IMMIGRATION CONSULTANT?

A California law, the California Business and Professions Code, states what the consultants must do.² If you have had dealings with an immigration consultant, and he or she did not do the things outlined here, see Part IV to find out what you can do now.

A. An Immigration Consultant Must Post Certain Notices On The Wall And Provide Clients With Written Information Regarding Bond Compliance

Before offering their services, all immigration consultants must openly display in their offices certain notices in English, as well as in the language of their clients.³ This notice must be at least 12

² Calif. Business and Professions Code §§ 22440-22447

inches by 20 inches in size.⁴ The writing must be in bold type, and each letter must be at least one inch in height and width.⁵

The notice must:

- ◆ State the full name and address of the consultant;⁶
- ◆ Provide evidence of compliance with bond requirements, including the bond number, if the consultant is not working for a non-profit organization;⁷
- ◆ State that the consultant is not an attorney.⁸

The consultant must post a second sign stating that he or she may not accept a fee for referring the client to another person for services that the consultant cannot or will not perform.⁹

In addition to the signs which the consultant must post in the office, he or she must also provide each and every client with a written statement providing the consultant's name, address, telephone number, agent for service of process, and evidence of compliance with the bond requirement, including the bond number.¹⁰

B. an Immigration Consultant Must Provide All Clients with Copies of All Documents Submitted on Their Behalf

The immigration consultant must provide each client with a copy of any document that he or she has completed for that client and submitted to the government, such as an application.¹¹

C. An Immigration Consultant Must Return All Original Documents to the Client

The immigration consultant must return any and all original documents submitted by you in support of your applications.¹² Examples of original documents are certified copies of birth certificates, marriage certificates and the like; an original naturalization certificate or social security card; or other official documents.

D. An Immigration Consultant Must Provide Clients With A Written Contract

³ Calif. B&P Code § 22442.2(a)

⁴ Id.

⁵ Id.

⁶ Calif. B&P Code § 22442.2(a)(1)

⁷ Calif. B&P Code § 22442.2(a)(2)

⁸ Calif. B&P Code § 22442.2(a)(3)

⁹ Calif. B&P Code § 22444(d)

¹⁰ Calif. B&P Code § 22442.2(b)

¹¹ Calif. B&P Code § 22443(a)

¹² Id.

Before providing any services to a client, the consultant must enter into a *written* contract with each client.¹³ Both parties must sign the contract. The contract must be written in both English and the client's native language.¹⁴ It *must* include:

- ◆ A description of the services to be performed;¹⁵
- ◆ The cost of those services;¹⁶
- ◆ A statement in bold type stating that the consultant is not an attorney and cannot act in the capacity of an attorney;¹⁷
- ◆ An easy-to-see statement that the client has the right to cancel the contract within 72 hours.¹⁸

The contract *must not* contain:

- ◆ Any guarantees or promises regarding results, unless those guarantees or promises are based on factual information;¹⁹
- ◆ Any statement that the immigration consultant can obtain any special favors from the INS or has some special influence with the INS.²⁰

Note: Exception for Non-Profit Organizations. Non-profit organizations that charge very low rates are not required to provide a contract.²¹ However, even when dealing with a non-profit it is a good idea to request a contract, so that all parties understand what they are agreeing to do.

E. An Immigration Consultant Must Post a Bond of \$50,000 with the California Secretary of State.

The immigration consultant law requires all immigration consultants to post a special immigration consultant bond of \$50,000 with the state of California.²² Failure to post the bond is a violation of the law. The purpose of the bond is: if the consultant harms a client and a judge orders the consultant to pay the client damages, the bond money will be used to pay the damages.²³

¹³ Calif. B&P Code § 22442(a)

¹⁴ Calif. B&P Code § 22442(d)

¹⁵ Calif. B&P Code § 22442(b)(1)

¹⁶ Calif. B&P Code § 22442(b)(2)

¹⁷ Id.

¹⁸ Calif. B&P Code § 22442(e)

¹⁹ Calif. B&P Code § 22442(c)(1)

²⁰ Calif. B&P Code § 22442(c)(2)

²¹ Calif. B&P Code § 22442(g)

²² Calif. B&P Code § 22443.1(a)

²³ Calif. B&P Code § 22443.1

There is one exception to the bond requirement: non-profit organizations that charge very low rates are not required to post the bond.²⁴

Besides the fact that failure to post the bond is a violation of law, a client who has been harmed has a very practical reason for wanting to know if the consultant posted a bond. If there is no bond, even if a court orders the defendant to pay a client money for damages, it may be very difficult for the client to actually get the defendant to pay the money. If there is a bond, it is very easy to collect court-ordered payments, which are automatically paid from the bond. See “Collecting Damages,” below.

To see if the consultant has paid a bond, check with the Secretary of State of California, **Trademarks and Special Filings Agency**. There are two ways to do this:

- ◆ By telephone: **(916) 653-4984**
- ◆ On the Internet: If you have access to a computer and the Internet, go to **http://www.ss.ca.gov/business/sf/bond_search.htm**

F. An Immigration Consultant Is Required To Retain Copies Of Client Documents And Forms For Three Years

An immigration consultant must retain copies of all forms and documents of all clients for at least three years from the time of the last service performed for the client.²⁵

G. An Immigration Consultant Cannot Make Any Misrepresentations, Cannot Make Any Guarantees Not in Writing, and Cannot Indicate That He Or She Has Influence With The INS.

It is illegal for an immigration consultant to do any of the following:

- ◆ Make any false or misleading statements to a client;²⁶
- ◆ Make any guarantees or promises to a client, unless the statement is in writing and is based on factual information;²⁷
- ◆ Make any statement indicating that the consultant can obtain special favors from the INS or has some special influence with the INS.²⁸

Examples of violations:

- ◆ Consultant A stated that he could obtain work authorization for his clients, when they were not eligible for it. This is a false statement, and a violation of the immigration consultant law.

²⁴ Calif. B&P Code § 22443.1(m)

²⁵ Calif. B&P Code § 22443(b)

²⁶ Calif. B&P Code § 22444(a)

²⁷ Calif. B&P Code § 22444(b)

²⁸ Calif. B&P Code § 22444(c)

- ◆ In addition, Consultant A was required to make any guarantee or promise in writing. Even if the statement had been true, the fact that he did not put it in writing it is another violation.
- ◆ Consultant B stated that because he “knows people” at the INS, he can get the case granted. Consultant C has on his business card, “Formerly with INS.” These are violations because they indicate that the consultants has special influence with the INS.

H. An Immigration Consultant Cannot Use Misleading Translations That Imply That He Or She Is An Attorney

An immigration consultant must not intentionally use any words which when translated into his or her clients’ native language, would imply that the consultant is an attorney.²⁹ The rule applies to any and all statements made, whether spoken or written in advertising, stationery, business cards, or other business related materials.³⁰

For example, in many Spanish-speaking countries “Notario” and “Licenciado” indicate that the person is an attorney. An immigration consultant should not use these titles – even if he or she really is a notary public.

IV. WHERE CAN YOU GO TO SUE IF AN IMMIGRATION CONSULTANT HAS ACTED ILLEGALLY AND VIOLATED YOUR RIGHTS?

If you have consulted with or hired an immigration consultant to assist you with your immigration case, and you believe that he or she has violated the law, you have the right to sue the immigration consultant for damages.

A. Civil Suit in Small Claims Court

Small Claims Court is a forum where individuals acting without an attorney can sue those who have caused them harm, for an amount which is not more than \$5,000.³¹ To collect damages of more than \$5,000, or to get “injunctive relief” (an order from the judge telling the other party to do something, like cease practicing as an immigration consultant), one must go to regular civil court, not small claims court.³²

Lawsuits against immigration consultants for violations of the business and profession code are often well suited to small claims court because the damages are often smaller than \$5,000, the rules relating to what evidence you can present are relaxed, and it is a cheap legal action to bring because both parties represent themselves without lawyers.³³ (If your damages are less than \$5000 the small claims court may be your only choice, since attorneys generally do not accept cases in which such small amounts are involved.)

²⁹ Calif. B&P Code § 22442.3

³⁰ Id.

³¹ Calif. Civ.Pro. Code § 116.220

³² Calif. Civ. Proc. Code § 116.220

³³ Calif. Civ. Proc. Code § 116.530(a)

In small claims court, you can consult with an attorney beforehand to get advice and help with the analysis, but when it comes to the hearing you are the advocate, and you tell your own story.³⁴

B. Other Options: Criminal Prosecution or Civil Suit in Superior Court

Criminal and Civil Prosecution by a District Attorney. District Attorney offices across California can file criminal charges against consultants who violate the California immigration consultant law and/or who defraud clients.³⁵ They can also bring civil charges. Both can be done at the same time.

It is often difficult to get the attention of overworked attorneys at the District Attorney's office and persuade them to prosecute. It helps if (a) there are several victims or a large amount of money was taken from one victim, and (b) there is community or political support for the prosecution. Every D.A. office has a consumer protection or consumer fraud unit. You can find the telephone number through Information. If you call the staff at this unit but believe that they are not paying attention to you, you may want to enlist the aid of local grass roots or community groups, elected officials, or even the local Bar Association or legal aid lawyers. If the consultant fraud problem is widespread in your community, these groups may be willing to telephone or write a letter asking the consumer fraud unit for a meeting. In addition, the Immigrant Legal Resource Center publishes a short manual for District Attorneys in how to prosecute these cases. Ask the District Attorney to contact the ILRC for the manual at aod@ilrc.org, or 415-255-9499, ext. 6263.

Civil Suit in Superior Court. If you want to collect damages of more than \$5000, you can sue in Superior or Municipal Court.³⁶ Here, as opposed to in small claims court, you will probably need to hire an attorney to represent you. The Bar Association can give you a referral to an attorney that can handle your case.

It may be difficult and expensive to hire an attorney. Many attorneys do not want to take cases that involve a relatively small amount of money or where they are likely not to get paid. In some areas, Legal Aid and California Rural Legal Assistance may be willing to represent you for free, especially if there are several victims. Point out to the attorneys that if you win, the judge has the power to order the defendant to pay your attorney's fees. A critical fact is: does the defendant have an immigration consultant bond posted with the Secretary of State (see Part III, Section E, above). If there is a bond, the attorney should feel confident that he or she will be paid from the bond.

Class Action suits are another option. If there is a group of individuals, while the damages due to each person may not be much, the total may be a significant amount of money and the attorney might be more likely to take the case. The Consumers Legal Remedies Act³⁷ allows a consumer who "suffers any damage" as a result of the use of a "method, act, or practice" that the Act condemns to bring a class action to represent himself and others who have been treated the same way.³⁸

³⁴ Calif. Civ. Proc. Code § 116.530(c)

³⁵ Calif. B&P Code § 22446.5(b)

³⁶ Calif. Civ. Proc. Code § 116.220

³⁷ Calif. Civ. Code § 1750, et seq.

³⁸ Calif. Civ. Code. § 1780(a), 1781(a). Deceptive practices that apply to fraudulent immigration consultants include the following: misrepresentation of certification of services, misrepresentation that person or services has an affiliation which he does not have, advertising with intent not to supply reasonably expectable demand, and misrepresenting the authority of a representative to negotiate terms of a transaction with a consumer. Calif. Civ. Code §1770.

If the suit is brought in Superior Court instead of small claims court, the judge can award you not only money, but “injunctive relief.” Injunctive relief means that the court can order the consultant to do something, such as obey the law, or even separate himself from the business. The court can also order civil penalties payable to the state.

Besides the fact that one must hire an attorney, there are other disadvantages to going to civil court. The consultant may hire his or her own lawyer and fight back, creating a long and costly hearing. Also, although the law provides that immigration consultant fraud cases should be given priority in scheduling,³⁹ it still may take many months to get a trial scheduled in civil court. The small claims court process is very quick; see Section V, below.

RULES GOVERNING SMALL CLAIMS COURT SUITS

A. Getting Assistance and Advice

Even though you are not permitted to have the assistance of an attorney when you go into Small Claims Court, you may *consult* with an attorney beforehand to help you understand your rights or to analyze your case.⁴⁰ The attorney can even draw up a legal memorandum or brief for you to submit. In addition, most California counties have “small claim advisors” who provide free advice over the phone or in person to individuals who are thinking about suing in small claims court.⁴¹ See Appendix A for a list of Northern California Small Claims County Advisors. Small Claims court advisors can assist you with procedural questions and organizing your case.

B. Using an Interpreter

You are permitted to hire an approved interpreter to help you communicate with the judge.⁴² You will be allowed to use an interpreter even if you speak English well, if you feel more comfortable speaking in your first language.

If you wish to use an interpreter, you must use one that is approved by the court.⁴³ You cannot simply show up at the hearing with a friend or relative who will translate for you. The clerks of the Small Claims Courts should have a list of approved interpreter services from which you may select.⁴⁴ Some community organizations offer approved interpreter services free of charge for low-income families.

If you do pay for an interpreter’s services and you win your case, the judge can order the defendant to pay you back for the amount it cost you.⁴⁵ Be certain to tell the judge how much the service costs (bring the invoice if possible) and ask the judge to order the defendant to pay the costs.

³⁹ Calif. B&P Code 22446.5(c)

⁴⁰ Calif. Civ. Proc. Code § 116.530(c)

⁴¹ Calif. Civ. Proc. Code § 116.940(c)

⁴² Calif. Civ. Proc. Code § 116.550(b)

⁴³ Id.

⁴⁴ Id.

C. How Much Money Can You Collect?

You cannot receive more than a total of \$5,000 damages in a small claims court case.⁴⁶ On top of the \$5,000 damages, the judge can also order the defendant to reimburse you for the cost of interpreter services and other court costs.⁴⁷

Calculating the damages is somewhat tricky. The immigration consultant law provides what damages can be collected.⁴⁸ for violations of this law. The victim is entitled to collect (a) actual damages, plus (b) treble damages or \$1,000 per violation of the immigration consultant law, whichever is higher.⁴⁹

Actual damages are the amount of money that will compensate you for whatever harm the violation caused you.

Example: Marco hired Carl the immigration consultant. In dealing with Marco, Carl violated the immigration consultant law by making false statements to Marco about what he would do for him. Marco paid Carl \$300. Carl did nothing for Marco.

Marco sued Carl in Small Claims Court and won. Marco is entitled to actual damages of \$300 because had Marco known that Carl was lying he would not have paid him.

Example: Josefina paid Ana an immigration consultant \$500 to prepare a petition for her brother. Ana failed to give Josefina a copy of the contract and did not post information about her bond. Ana did not complete the form correctly and Josefina's sister was denied her case. In this case Ana committed two violations of the statute Ana did not provide a copy of the contract to Josefina and she did not post a sign stating her bonding information.

Josefina's actual damages from these violations, however are minimal. Having known the bonding information and/or having a copy of the contract had no bearing on whether or not Josefina paid Ana and on whether Ana did a good job. Therefore, in Josefina's case there are no actual damages.

However, the immigration consultant law also provide for additional compensation in the form of treble damages or \$1000.⁵⁰ Treble damages are equal to three times the amount of the actual damages. The law provides for a payment of \$1,000 per violation, if that amount is greater than treble damages.⁵¹ For example, if actual damages were \$200, treble damages would be \$600. In that case, you would want to take advantage of the option of collecting \$1,000 instead of treble damages. In some cases, there are no actual damages resulting from the violation. In that case, the plaintiff will only be able to collect \$1,000 per penalty.

⁴⁵ Calif. Civ. Proc. Code § 116.610(g)

⁴⁶ Calif. Civ. Proc. Code § 116.220

⁴⁷ Id.

⁴⁸ Calif. B&P Code § 22446.5(c)

⁴⁹ Calif. B&P Code § 22446.5(a)

⁵⁰ See, e.g., id.

⁵¹ Id.

Example: As we noted Josefina had no actual damages from the statutory violations. However, because Ana violated two sections of the statute, Josefina is entitled to collect \$2,000 in Small Claims Court.

Notice that Josefina is not being refunded the money that she paid to Ana. In order to get her money back, she could include in her Small Claims Suit a charge of Fraud. If able to prove that Ana committed fraud, then the judge could award her a refund of her money and Ana would be collecting \$2,500 (\$500 in damages for the fraud and \$2,000 for violations of the consultant statute). See Part IX for information on rescinding a contract and suing for fraud.

Example: We decided that Marco was entitled to \$300 in actual damages. In addition he is entitled to treble damages or \$1000, whichever is greater, for each violation. In this case, where Marco's actual damages were only \$300, we find that \$1000 is greater than treble damages ($3 \times \$300 = \900) so we choose \$1,000. This means that Carl owes Marco \$1,300.

In both these examples it was clear that the damages that the plaintiffs could collect was not worth the trouble, expense and delay of going to Superior Court. But if you have a very strong case (e.g., written proof of fraud, or several victims and witnesses), and could collect much higher damages than \$5,000, you might decide to sue in Superior Court. See Part IV, Section B above.

D. Deadlines: When to Sue

There is a time limit on bringing a civil action under the laws regulating immigration consultants. This limit is called the statute of limitations. The limit for actions against the immigration consultant under the Business and Professions Code is four years from the date you discovered the facts – what the consultant actually did – that show that the consultant violated the immigration consultant's law.⁵² This is true even if it is not until later that you understand that what the consultant did was wrong.

To understand how the statute of limitations works, consider the following example:

Suppose that today is October 1, 1999, and you have just learned of your rights when dealing with an immigration consultant. Suppose also that on September 2, 1995, you went to see Licenciado David, whose signs and business cards indicated that he is a "Notario Publico." While you were in David's office, he told you that for \$200 he would prepare and file your immigration forms within two weeks. You later recall that David:

- Did not display the required notice in his office;
- Did not give you the required written notice;
- Did not provide you with a written contract; and
- Calls himself "Licenciado" and "Notario Publico," wrongly implying that he is a lawyer.

In this example, it is clear that David has committed several violations of the law. So, on September 2, 1995, you knew certain facts that amounted to four separate violations. Because you knew them on September 2, 1995, the four-year time period started on that date and your right to sue ended on September 1, 1999. Even though you did not know of your rights at the time that you originally saw David, the clock still has run out and as of October 1, 1999 you no longer have the right to sue David for these violations.

⁵² Calif. B&P Code § 22448

But suppose that you had also returned to David's office on November 2, 1995, and asked for copies of the forms David completed for you, and for the return of your original documents, which include your mother's baptism certificate. David tells you that:

He has no copies of your forms;
He does not have your original documents; and
He never filed your application.

Here, you first learned on November 2, 1995, that David did not have copies, did not have your original documents, and did not file your documents. These are facts that prove the violation of the law. The time limit began on November 2, 1995, but only for these three violations. You have until November 1, 1999, to file your lawsuit against David for failing to provide you with copies of the forms, for failing to return your original documents to you, and misrepresentation (he said he would file the application but did not).

Remember that the four years in which to file a suit is counted from the day you discover the facts about what the consultant did, not the day you first understood the requirements of the immigration consultant law.

E. Which Court Location

You must find out which Small Claims Court is the correct court for your lawsuit. This is based on where the immigration consultant lives or does business, not on where you live.⁵³ You can sue in any Small Claims Court located where:

- ◆ the immigration consultant lives;
- ◆ the immigration consultant has his or her business; or
- ◆ The immigration consultant used to do business, if he or she is no longer in business.

You can find the exact location of Small Claims Courts by looking in the government pages of the telephone directory under county courts. Some court jurisdictions have a help line you can call that has either pre-recorded information or counselors who may be able to answer your questions. See Appendix A for a list of phone numbers for some of the help lines.

F. What Forms to Complete

Once you know where you will sue the immigration consultant, you will have to complete the Small Claims Court complaint form. Many of the forms and documents that you will need are included in this manual. You should submit:

- ◆ A completed Small Claims Court official complaint form, "Plaintiff's Statement and Order to Defendant, which is Form SC-100. See copy in Appendix B.
- ◆ A copy of the California immigration consultant law. See copy in Appendix D.
- ◆ To make your case clear, you may want to include a checklist drafted by the authors that permits you to check off which violations of the Business and Profession Code the consultant has committed. See Appendix C.

⁵³ Calif. Civ. Proc. Code § 116.330(c)

Note that Appendix B also contains a “Proof of Service” Form, Form SC-104. You will submit this to the court later (but at least two days before your court date), to show that you have properly notified the defendant of the lawsuit and given him a copy of the complaint. See “Service of Process,” at Part I below.

G. Submitting the Forms to the Court

Once the forms have been completed, you should make two copies of the entire set and take the original and the two copies to the clerk of the court. There you will pay the filing fee, which is twenty dollars.⁵⁴ The fee can be paid by check or cash.⁵⁵

The clerk will accept the fee and the original forms, assigning a case number to your complaint. You should submit the original and two copies of the Plaintiff's Claim to the Clerk, who will stamp them and return the two copies to you (or only one copy if the court will serve the defendant—see below). One of these copies is for your records, and the other copy must be served on the defendant. The Clerk keeps the original in the Court file.

H. When Will Your Case Be Scheduled?

Small Claims Court moves quickly. If the address listed for the defendant is in the same county where the Court is located, then the court date may be set for no sooner than 15 days from the time of filing, but not longer than 40 days after the date of filing.⁵⁶ If the defendant's address is outside the county where the court is located, the court date can be set for no sooner than 30 days from the time of filing, but no longer than 70 days after the date of filing.⁵⁷

In some cases, you will be permitted to select your own court date, and you should choose a day that is convenient for you, and which gives you enough time to properly serve the complaint on the defendant. (Even if you cannot select your own date, you are not required to take the first date that the Clerk suggests.) You must serve the defendant at least 10 days before the court date, if he is in the same county as the court, or at least 15 days before the court date, if he is in a different county.⁵⁸ See following section on Service of Process.

I. Notifying the Defendant: “Service of Process”

“Service of Process” is the technical term for giving the defendant a copy of the claim that you have filed against him or her. All defendants must be served with a copy of the claim. If you cannot prove that you served the defendant properly and far enough ahead of the court date, you may have to put off your court date you can serve the defendant in several ways.

In this discussion, remember that you and any others suing the consultant are the “Plaintiff” and the consultant is the “Defendant.”

⁵⁴ Calif. Civ. Proc. Code § 116.230(a). Each additional claim, up to twelve in one year, requires an additional twenty-dollar filing fee. Once the claimant exceeds twelve claims in one year, the charge increases to thirty-five dollars.

⁵⁵ ???

⁵⁶ Calif. Civ. Proc. Code § 116.330(c)

⁵⁷ Id.

⁵⁸ Calif. Civ. Proc. Code § 116.340(4)(b)

Who Can Serve the Papers? Only a person who is *18 years or older and is not one of the plaintiffs* may serve the papers on the defendant. To avoid any confusion, if you arrange for someone you know to serve the papers, it is better to ask a friend than a close relative. Obviously, the person should be competent, responsible, and able to speak the language of the person he or she will be serving.

You can choose to pay to have someone else serve the defendant. Some but not all Small Claims Court systems offer to serve the plaintiff by certified mail, for an additional fee (see “Service by Certified Mail,” below). Or, you can hire a professional process server. You can find process servers in the yellow pages under “Process Serving” In either situation, if you win your case the judge may be willing to order the defendant to reimburse you for the cost of service. Keep the written bill for the service to show the judge.

When Must Service Occur? If the defendant lives in the county where the court is located, he or she must be served at least 10 days before the court date. If the defendant lives in a different county from where the court is located, he, or she must be served at least 15 days before the court date.⁵⁹

If you cannot prove that the defendant has been properly served within these time limits, you will have to change your court date. The time limits are strictly enforced, and they are your responsibility. If you have asked the Court or a process server to serve the defendant, be sure to check with them to make sure that the service occurred properly and within the above deadlines.

How to Serve the Complaint: Personal Service, Substituted Service, or Certified Mail by the Court. There are three ways to serve a complaint: personal service, substitute service, and service by certified mail.

You can arrange for someone to do personal or substituted service.⁶⁰ After the defendant has been served, you must notify the court. This is accomplished by sending the court a Proof of Service form, signed by the person who actually served the defendant. See Form SC-104 at Appendix B. *The court must receive this form at least two days before the court date.*

Only the Small Claims Court staff can do service by certified mail.⁶¹ You do not need to notify the court of service or file a Proof of Service form when using this method.

-- **Personal Service.** Personal service means that a qualified server (someone who is over 18 years of age and not a plaintiff) personally hands the complaint to the defendant. If the server does not know the defendant, he or she should make sure that the person receiving the papers is the defendant. If the defendant refuses to take the papers, the server can simply put the papers down and leave. This will be considered sufficient for personal service.⁶²

-- **Substituted Service.** Under this method a qualified server (anyone over 18 years old and not a plaintiff) may give the papers to someone at the home of the defendant, as long as the person receiving the papers is competent, is at least 18 years old, and is told what the papers are for.⁶³

⁵⁹ Id.

⁶⁰ Calif. Civ. Proc. Code § 116.340(3)

⁶¹ Calif. Civ. Proc. Code § 116.340(1)

⁶² Calif. Civ. Proc. Code § 116.340(2)

Or, the papers can be left at the defendant's place of business during normal business hours, with the person who is in charge.⁶⁴ This may be the easiest form of service. Remember, whoever is served with the papers must be told what the papers are for.

After substitute service, ward, a qualified server must send an additional copy of the papers to the defendant by first class mail.⁶⁵

Note: Remember to Notify the Court After Personal or Substituted Service, using the Proof of Service form, at least two days before the hearing.

-- **Court Service by Certified Mail.** Under this method, the Clerk of Court will send the papers to the defendant by certified mail, return receipt requested. The Clerk of Court will charge a fee for this service, but if you win the case the court will probably order the defendant to reimburse you.⁶⁶ If you choose this method of service, *be sure to contact the court before the court date to be certain that the defendant was served* (received the certified mail).⁶⁷

VII. WHAT WILL HAPPEN AT THE HEARING

When the court date arrives, you must be well prepared. This preparation includes gathering all the documentation you think you need to prove your case, bringing a copy for the defendant, arranging for witnesses to testify, and arranging for an interpreter if you need one.

On the day of the court hearing, be sure to arrive on time. In fact, it is probably best to arrive early, so that you can find the courtroom and be seated before the time for the hearing.

When your case is called, you will go to the table in front of the judge, along with any witnesses you have brought, and with your interpreter if you have one. You will talk to the judge first, and tell him or her why you believe the defendant owes you the amount of money you are claiming. You will go over all of the sections of the law that you believe that the consultant violated, explain what happened, and present any evidence you may have. See "Presenting Your Case" in Section VIII, below.

When you are presenting your case, be sure to speak only to the judge, and not to the defendant, *even if the defendant interrupts you*. Listen carefully to any questions the judge asks, and respond only to the question the judge asked, without going into any other details of your case. You should also remind your witnesses to do the same.

If you bring copies of documents for the judge to look at during your hearing, be sure to also bring a copy for the defendant and a copy for yourself to keep. *You can never give the judge a document of any kind without providing a copy to the defendant*. When you tell the judge that you have these documents, the Bailiff (a Sheriff's Deputy) will come to the table to take the copies from you. Hand the

⁶³ Calif. Civ. Proc. Code § 116.340(3)

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Calif. Civ. Proc. Code § 116.610(g)

⁶⁷ Calif. Civ. Proc. Code § 116.340(4)

Bailiff one copy for the judge and another copy for the defendant, and be sure to tell the Bailiff that you are giving him or her a copy for the defendant.

After you have presented your case, the judge will give the defendant an opportunity to speak. This is when the defendant will attempt to convince the court that she or he has done nothing wrong, and that you have not been harmed by his or her actions. While the defendant is speaking, be patient, and do not interrupt his presentation, even if he interrupted yours. Remember that you will have another chance to speak to the judge after the defendant is finished. At that time, you can respond to the defendant's comments.

SECTION VIII. PRESENTING YOUR CASE: PROVING THAT THE CONSULTANT VIOLATED THE LAW

In order to win your case, you must prove that the defendant did not obey the requirements for immigration consultants that are set out under the California Business and Professions code. The first step is to tell the judge what the defendant did or did not do, and how this violated the law. The next step is to offer any proof you might have that what you say is true.

It is important to prove all of the different sections of the immigration consultant law that the consultant violated. (For one thing, proving all of the sections may help increase the money that you can collect. See "Damages" at Part V, Section C, above) A checklist of the possible violations in Appendix Cxx. A copy of the immigration consultant law appears in Appendix D.

In addition to telling the judge about the violation, you must provide **proof** that the violation occurred. This section tells you what kinds of information will help you prove to the judge that the immigration consultant violated the law, and how to show the judge that the defendant should pay you money for having failed to meet the requirements under the code. To help you organize the information you need to provide the judge we have included in Appendix E a blank evidence preparation form and a sample completed preparation form in Appendix F.

For all cases, you will also need to provide the judge (and the defendant) with a copy of receipts for the expenses you paid when suing the defendant. These expenses include the filing fee, costs of serving the papers on the defendant, and interpreter's fees. Provide the judge with a copy of the statute (Appendix C) to show how money damages and penalties are supposed to be assessed.

IN EVERY CASE, you *must* provide the judge (copy to the defendant) with the following:

(KB clean up: copy whole statute?)

- ◆ A copy of the immigration consultant statute (included in this manual) to show the provision of the law that the defendant violated. We suggested that you include a copy of the whole statute in your complaint that you already filed with the court. Bring some extra copies just in case.
- ◆ A copy of the section of the statute (Appendix D of this manual) that shows how money damages and penalties are supposed to be assessed.
- ◆ Evidence of any costs you had to pay that are directly related to the defendant having violated this provision, plus receipts for the expenses you paid when suing the defendant. The costs that you paid because the defendant violated the provision might include the cost of replacing your original documents, after the defendant refused to return them to you. The expenses of suing the defendant can include the filing fee, costs of serving the papers on the defendant, and interpreter's fees. (For

more information about how to calculate the money damages that you can collect, see Part V, Section C, above.)

A. Failure to Post Notices and Provide Written Statement

When your claim against the defendant is based upon his failure to post the required notice openly in his office, you will have to tell the judge the facts as you remember them. See Part III, Section A, above, for the legal requirements. You should organize your presentation and evidence as follows:

- ◆ Tell the judge the date that you first entered the defendant's office.
- ◆ Describe the office and what you observed on the walls of the office, and include the fact that you saw no notices of the type required by California statute.
- ◆ Introduce any eyewitnesses, people who also have gone to the defendant's office and who did not see the required notices posted in the office.
- ◆ Provide the judge with copies of any photographs you may have showing the office and the fact that no notice is posted.

B. Failure to Give You Copies of All Documents Submitted on Your Behalf

If your claim is based on the defendant's failure to provide you with a copy of all the forms and documents that he submitted to the INS for you, then you should organize your presentation and your evidence as follows. (See Part III, Section B, above, for the legal requirements.)

- ◆ Tell the judge what you and the defendant talked about, and what forms and documents the defendant agreed to complete and file for you.
- ◆ Provide the judge with a copy of the statute that shows that the defendant is required to give you copies of all the documents submitted on your behalf (included in this manual).

Provide the judge with a copy of all letters and any other documents given to you by the defendant, and copies of all letters and other documents that you gave to the defendant.

C. Failure to Return Your Original Documents

Many INS applications require the submission of copies of certain documents, for example birth certificates and marriage certificates. You might have submitted original documents to the immigration consultant who helped you with your applications. If the immigration consultant failed to return these original documents to you, then you should organize your presentation and your evidence as follows. (See Part III, Section C, above, for the legal requirements.)

- ◆ Tell the judge what forms the defendant agreed to help you complete, and what documents the INS requires you to submit with those forms.
- ◆ Provide the judge with copies of all the letters and documents that you received from the defendant, and copies of all letters and other documents that you gave to the defendant.
- ◆ If your original documents included documents which are difficult and expensive to obtain, provide the judge with receipts and other documents that show how difficult and expensive it was for you to obtain the original.

D. Failure to Provide You with a Written Contract

If the defendant did not give you a written contract, or if the contract he or she gave you did not contain the rights and other information required by law, your organization and presentation of the evidence should be as follows:

- ◆ Tell the judge when you first met with the defendant, and what services the defendant agreed to perform for you.
- ◆ Provide the judge with copies of all documents and letters that you received from the defendant, including any contract he may have given you.

See Part III, Section D, above, for the legal requirements. Remember that a nonprofit agency that charges very low fees is not required to provide a contract.

E. Failure to Post the \$50,000 Immigration Consultants Bond

Immigration consultants must post a \$50,000 bond with the California Secretary of State. Part III Section E discusses how to check to see if the consultant really posted the bond. To prove that the consultant did not post the bond:

- ◆ State that you contacted the California Secretary of State office, which informed you that the consultant did not have a bond if you have access to the Internet, go to the web site that lists all persons holding immigration consultant bonds. Print it out the page and bring it to court.

See Part III, Section E, above, on how to contact the Secretary of State office to inquire about the immigration consultant bond.

Remember that non-profit organizations that charge very low fees are not required to post the \$50,000 immigration consultant bond. You cannot sue such organizations for not having a bond.

F. Failure to Retain Copies of Your Documents and Forms for Three Years

If you discover that the defendant has failed to keep copies of all your documents and forms for three years, then you can base your claim against the defendant on this failure. (See Part III, Section F, above, for the legal requirements.) Your presentation and organization of the evidence should be as follows:

- ◆ Tell the judge when you first consulted with the defendant, and what forms the defendant agreed to complete and submit for you.
- ◆ Provide the judge with copies of all letters and documents that you received from the defendant, and any receipts for filing fees that you may have received from the INS or from the defendant. Also provide cancelled checks (or copies of cancelled checks), money order receipts, cashier's check receipts, letters or other documents you have received from the INS concerning your case. (If the consultant actually did submit your documents to the INS, correspondence from the INS will help you establish the dates that the forms and documents were submitted, and help determine whether it has been less than three years, so that you show that the defendant should still have copies of your documents and forms.)

G. Misrepresentations, False Statements, and Implication that the Consultant Has Special Relations with INS

The California consultant law makes it illegal for an immigration consultant to mislead you concerning your case, or to tell you that that he/she has a special relationship with the INS that will influence the success of your case. (See Part III, Section G, above, for the legal requirements.)

This provision may be difficult to prove. Often the consultant does not put the statements in writing but rather tells you orally. If the statements were made to you alone, the judge will have to decide who is more credible, but if the statements were made in the presence of another person, you can have the witness testify and it will strengthen your case.

If you are not comfortable presenting this type of claim or if your damages are substantially more than \$5000, you may decide that it is better to get a lawyer and file a suit in Superior Court to pursue this type of claim. Make a careful choice: if you lose your case in small claims court, you cannot file the same suit in Superior Court.

In small claims court, you should present your evidence as follows:

- ◆ Tell the judge when you met with the defendant, and what you discussed with the defendant each and every time you met. Tell the judge what the defendant agreed to do for you, and what he told you about your case.
- ◆ Present a witness, if any, which heard the defendant make the false or misleading statements.
- ◆ Provide the judge with documents, if any, showing what the defendant agreed to do for you.
- ◆ Provide the judge with documents, if any, that show that the consultant implied that he had connections with INS (such as “Formerly with INS” on a business card.)
- ◆ In some cases, you might want to get the help of an immigration attorney or certified representative. For example, if the consultant said that he would apply for some immigration relief for you that you actually weren’t even eligible for, you should bring in a copy of the statute that sets out the immigration relief, and perhaps even a letter from the immigration expert explaining why the consultant’s promise was false.

Example: Mary the immigration consultant told Martin that he could apply for work authorization under a new amnesty program, that permits anyone in the U.S. for five years to get a green card. There is no such program. Martin may want to ask an immigration attorney to write a letter stating that there is no such program.

H. Use of Misleading Translations

An immigration consultant is not allowed to use any terms that when translated literally would imply that the consultant is an attorney if his intent is to mislead his clients into believing that he is an attorney. (See Part III, Section H, above, for the legal requirements.) If you believe that the immigration consultant used these misleading translations, your organization and presentation of evidence should be as follows.

- ◆ Tell the judge what words the immigration consultant used, and what those words mean when literally translated into your native language.
- ◆ Provide the judge with copies of any and all documents, including letters, business cards, advertising flyers, that contain the words you believe to be misleading.
- ◆ If no documents exist, and your claim is that the defendant used the misleading terms in his conversations with you, present any witnesses who heard the defendant talking to you and using the misleading term.

I. Failure to Provide the Required Written Statement

If the defendant did not provide you with a written statement explaining that he or she was not a lawyer and giving other information, you should organize your presentation and evidence as follows. (See Part III, Section H, above, for the legal requirements.)

- ◆ Tell the judge the date you first entered the defendant's office.
- ◆ Provide the judge with a copy of the California statute that shows that the defendant is required to give you a written statement, and what the written statement should say.
- ◆ Provide the judge with a copy of all the letters and any other documents that the defendant has given you.

IX. CANCELLING (“RESCINDING”) YOUR CONTRACT WITH THE CONSULTANT

As part of your case against the consultant, you need to show that the contract the two of you entered into is not valid and should be cancelled or “rescinded.”

A contract is just an agreement between two parties, where each promises to do something in exchange for the other doing something. The following exchange makes a contract: “I will take out the garbage if you wash the dishes.” “All right.” A contract can be written or oral. Just because you did not sign a contract does not mean that one did not come into existence.

Here, the immigration consultant promised to deliver certain services that he said would bring you certain benefits, and in return, you promised to pay a certain amount of money.

In Small Claims Court, you should state that you want to “rescind” (cancel) the contract that you made with the immigration consultant, because the consultant did not deliver the promised services (or the services he delivered were not worth what he said they were). Since he broke his promise, you should not have to pay him any money, or at least not any more money than the services were worth and you should get a refund.

You want to show that the contract should be rescinded for two reasons. First, in some fact situations it will be easier to cancel the contract than to prove that the consultant violated some part of the immigration consultant law, e.g., committed fraud. Thus, while you may not collect treble damages just because the contract is cancelled, at least you will get your money back. Second, canceling the contract will establish that *you* should not be held to the contract you made with the consultant. For example, if you signed a contract to pay a consultant \$5,000, and stopped paying after \$3,000 because you discovered that the consultant was defrauding you, you need to charge breach of contract so that she cannot try to come after you for the additional \$2,000.

There are a few common bases for rescinding contracts:

- ◆ **Breach of Contract.** If the consultant did not do the services that he promised (e.g., submitting an application), or if you did not receive the benefit that he promised (e.g., receiving work authorization), then he has “breached” the contract by failing to keep up with his part of the bargain, and you can rescind the contract.
- ◆ **Fraud.** If your consent to the contract was obtained by fraud, you can rescind the contract.⁶⁸
- ◆ **Failure to translate a contract into Spanish.** Any person who negotiates a contract in the Spanish language must contract for legal services that is negotiated in the Spanish language lawyer, or his or

⁶⁸ Calif. Civ. Code § 1689

her agents, who negotiate a contract for legal services in the Spanish language must give the client a copy of a Spanish-language translation of the contract, before the contract is signed.⁶⁹

To prove that the contract should be cancelled because of the consultant's illegal actions, you might present the following evidence:

- ◆ Give the Judge a copy of the written agreement you and the consultant entered into, if any. If you do not have a written contract, you will have to prove to the judge that there was an oral agreement. You will have to give the judge specific information as to what the consultant promised to do and what the price for those services was.
- ◆ Tell the Judge exactly how the consultant failed to do what he/she had promised to do. Be specific. Do not just say, "He did not get a green card for my wife." You will need to explain what documents he was supposed to fill out and how he did not fill them or filled them incorrectly.

COLLECTING A JUDGMENT

If the consultant has posted a bond as required by the statute, the bond can pay your judgment.⁷⁰ If no bond has been posted or if the judge awards you a refund of your payments to the consultant for breach of contract, you will need to rely on the court to schedule a payment plan with the defendant.⁷¹ If payments are not made you can request that the person's wages be tapped for payment or that property be seized.

⁶⁹ Calif. Civ. Code § 1632(a)(5)

⁷⁰ Calif. B&P Code § 22447(a)

⁷¹ Calif. Civ. Proc. Code § 116.620.

INDEX OF APPENDICES

APPENDIX A: SMALL CLAIMS ASSISTANCE REFERRAL LIST

APPENDIX B: SMALL CLAIMS COMPLAINT FORM

APPENDIX C: SMALL CLAIMS COMPLAINT ATTACHMENT

APPENDIX D: COPY OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 22440

APPENDIX E: BLANK EVIDENCE PREPARATION FORM

APPENDIX F: SAMPLE EVIDENCE PREPARATION FORM