

# CHAPTER TWO

## Space, Equipment, and Tools

**Learning Objective:** *To identify and explain the importance of essential space, equipment and tools needed for an efficient and effective immigration legal services program.*

The tools a program uses to provide legal services to the community are essential to the success of an immigration program. This chapter describes the space and tools you will need to provide for your program. We will cover office space; office furniture and equipment; computer hardware and software; law library materials; and malpractice insurance. Throughout the chapter we will explain why each of these elements is necessary for your program.

### Confidentiality

Protecting client information is essential to the success of an immigration legal services program. Therefore, confidentiality is the most important consideration when creating office space, deciding upon office equipment, and choosing tools to help legal workers provide services. All immigration legal program staff should be well-versed in best practices in protecting and preserving the confidentiality of clients, their families, and the information that is housed within the office space.

### Office Space

#### **Staff Workspace**

Legal representatives have a duty to maintain their clients' confidentiality. This is non-negotiable. The requirement to maintain confidentiality imposes constraints on a legal program: it must ensure that conversations with and about clients are not overheard. Only legal staff should have access to client files, both physical and electronic.

The need to maintain client confidentiality imposes requirements on the office space a legal program uses. The program must ensure that client interviews are not overheard by non-legal staff, by other clients, and by anyone else at the agency. For most agencies, this means that client interviews must take place in rooms with walls and doors. Programs that provide mental health counseling would not take place in an open space where conversations can be overheard. Legal service provision should be treated in the same manner, with services provided inside a closed office space.

Confidential space can help ensure that clients provide as much information as possible, an essential part of effective representation. If a client is concerned about being overheard, he or she may not be entirely open with her or his representative. If a client feels sure that only her or his representative can hear what the client says, the client is more likely to be completely forthcoming.

In a stand-alone immigration agency, this is generally not hard to accomplish. If all staff at an agency work in the immigration program—whether as attorneys, accredited representatives, paralegals, or support staff—they all may have access to legal files and conversations about clients. You should, however, set up your space so as best to ensure that clients do not overhear confidential conversations with and about other clients. A waiting room that is separate from interview and office space should help with this.

Confidential space can be more of a challenge for small immigration programs housed within larger nonprofit agencies. When your immigration program has only one or two staff members, and they don't have their own offices, how can you maintain client confidentiality? There are also challenges for agencies with larger immigration staff that offer services other than immigration services. Refugee resettlement agencies, for instance, often assist their refugee clients with immigration matters as well as offering them resettlement services.

Agencies like these will have to come up with ways to ensure that conversations with and about clients are private. You may have a conference room that your immigration staff can use for client interviews, or you may have staff offices that are empty at times and can be used by immigration staff. In an agency with both immigration and non-immigration staff, it is important to make sure that the staff understand the requirement of confidentiality and adhere to it. It is also important to ensure that your non-immigration staff understand that immigration staff will have to use common space for private client meetings from time to time.

Many agencies with attorneys, accredited representatives, and/or non-accredited immigration workers on staff allocate offices to attorneys and cubicles to accredited representatives and non-accredited staff. If your program does this, you must make sure that your cubicle space is physically separate from the rest of the agency, or that all client interviews and phone conversations that identify clients take place in closed rooms.

### ***Maintaining Confidentiality When You Have Limited Office Space***

One resettlement agency with a staff of eight full and part-time employees found what seemed to be a perfect way to keep afloat financially: free use of office space in a local church. The program was given a large room that they divided up with desks and bookcases. The entire staff worked in this room. The program offered immigration services along with its resettlement work. Refugees who needed immigration help would see the accredited representative, who was also a caseworker, at her desk in an alcove in the corner. There were tall bookcases all around her desk.

What was the problem with this set-up? The accredited representative had no confidential space in which to interview clients. The agency's other clients could overhear conversations she had with immigration clients. Other clients might overhear phone conversations about her immigration clients. Her immigration clients might be less than forthcoming about sensitive information, like their criminal histories—with devastating immigration consequences—if they did not feel their conversations with their representative were truly private.

How to solve this problem? The agency was getting free rent and could not afford to pay for a larger space with private rooms. However, there was a small, unused office space next door to the agency's space. Even though the agency could not use this space as a permanent staff office, they were able to negotiate with the church to use it as a confidential client interview room. The accredited representative was able to get a used laptop donated, and would take the laptop into the interview room with her when she met with immigration clients. She used a cell phone in this small room to conduct confidential phone conversations about her immigration clients.

## **Waiting Room**

Depending on the way you conduct intake, you may need a sizeable waiting room. Walk-in intake days can lead to large numbers of people waiting to be seen. The waiting room should be clean, neat, and welcoming. Signs should be in languages appropriate to your client population as well as in English. You might also want to have toys for children in the waiting room.

Staff must maintain client confidentiality in the waiting room. Conversations with clients about their cases should not take place here. When office staff call a client to be seen by a case worker, full names should not be used, in order to protect privacy. Clients could be provided with a number, or first names could be used.

## **Office Equipment**

### **Locked Filing Cabinets**

An immigration program housed within a larger agency will need to have filing cabinets that lock in which to keep immigration files. File cabinets should be locked every evening as well when staff are not in the office. It's imperative that immigration files be maintained separately from the rest of the agency's files, and that only immigration staff have access to the immigration files. If possible, keep immigration files in a separate filing room from the rest of the agency's files. This segregation of immigration files is necessary to maintain required client confidentiality.

## **Locked Safe for Filing Fees**

You should also have a locked safe or box in which to hold client filing fees. It is dangerous to keep clients' U.S. Citizenship and Immigration Service (USCIS) filing fees tucked into individual files, or to keep them in desk drawers or individual offices. The best way to protect your clients and your agency from having money disappear is to invest in a locked safe. All filing fees will be kept locked in the safe until the legal worker is ready to mail out the application. Strictly limit the number of people with access to the key or safe combination. Chapter 6 will further discuss the different forms of payments that will minimize your program's liability.

If you do not have a safe (and even if you do), strongly consider not accepting client filing fees until the application is ready for mailing. The shorter the time period in which the agency is responsible for client money, the better for the agency.

## **Shredder**

Your immigration program will generate copious paperwork, much of it with confidential client information on it. It is a very good practice to get a shredder for your office, or to pay for a shredding service.

Every state has its own requirements regarding the professional ethical standards for when and how files should be destroyed. A good website to check your state's requirements is [www.legalethics.com](http://www.legalethics.com). Click on States on the left-hand side menu. Clients should be made aware of the length of time your office will retain their closed file. This information can be included in the case termination letter. See Chapter 5 for more information about this letter.

## **Telephone and Email Systems**

Clients should be able to reach immigration program staff easily and feel confident that their message is reaching the appropriate person in a confidential manner. The recorded message of the voice mail system should state the organization's name and the name of the person whose mailbox has been reached. When possible, each staff member should have his or her own voice mail box. Additionally, thought might be given to a multi-prompt answering system that helps clients receive information without speaking directly to a case worker. For instance, basic information about documents needed for a certain type of application, general processing times, or times for walk-in appointments could be provided in a recorded message. This will reduce staff time on the telephone, which may be useful in the future when demand for services may be much higher due to legalization. This message could also be available in the most common languages of a program's clients.

If possible, each staff member should have his or her own email address. This allows clients to feel more confident that their message is reaching the correct staff member instead of landing in an agency-wide mailbox where several people may read the message.

## **Computer Equipment and Software**

Each member of your immigration staff will need access to a computer. High-speed internet access is a must. USCIS has plans to expand its e-filing program, and immigration programs will need the technological capability to e-file. You may decide to use other mobile computer technology to allow your staff to work from remote locations, such as doing intakes off site. Those can be tremendously useful and can expand your program's ability to offer efficient legal services, but note that there are issues relating to basic professional and ethical concerns that you must carefully review.

With mobile technology, the following devices present different security concerns:

- **Mobile Telephones:** Cell phone conversation frequently occurs in very public places and poses serious confidentiality concerns. Make sure that conversations take place in private settings.
- **Laptop Computers:** Laptop computers are more attractive targets for theft than desk top units. Documents left open on the computer desktop may be visible to others. Set screen savers to activate automatically after a period of idleness and require a password to resume.
- **Wireless mobile devices:** Documents and e-mails with client information are available on wireless mobile devices. When discarding these devices, practitioners should ensure effective purge of the stored information.

- Removable disks/drives: USB flash drives are very convenient, but easily lost. New USB flash drives now feature security functions such as encryption and password protection.
- Public (unsecured) internet access can comprise your clients' personal information.

You will also need policies in place to ensure that staff who end their employment with the agency turn over all computer equipment, including flash drives.

## Case Management Technology

No immigration legal program should operate without case management technology. Used well, it allows programs to operate far more efficiently and accurately; makes missed deadlines and inaccuracies much less likely; allows program managers to easily track client data; and makes it much easier to track finances. A good case management program is one of the most important investments you can make in your program.

Electronic case management systems are much more than “forms-generating” programs. Case management technology should be integrated into almost all aspects of case management; see Chapter Five for a complete discussion of case management. An electronic case management system enhances case management: it can remind staff of important deadlines; provide a central location for case notes; and save client data, leading to greater staff efficiency and reducing the likelihood of errors. Some case management software can provide up-to-date federal immigration forms within twenty-four hours of issuance, provide electronic forms which automatically populate common information into forms of a same application, provide a back-up to hard-copy files, and e-file completed forms to USCIS. For program managers, it can track data, produce a wide range of reports, facilitate mass mailings to clients about new immigration benefits or deadlines, and facilitate billing. Strong case management technology helps agencies provide top-notch professional service to their clients.

There are many immigration case management systems on the market; you will need to choose the best one for your immigration legal program. The most important consideration in choosing a system is to find one that your agency will actually use. A system is only as good as the use that is made of it. If the system is used solely for form-filling, it is not doing the agency much good.

### *Why the Least Expensive Option is Not Always the Best Choice*

The following story is based on the experiences of several nonprofit immigration agencies:

“ACE Immigration Services” bought a low-cost immigration software package (\$199 special nonprofit rate!) about seven years ago. The agency has been happy with its ability to print out beautifully formatted immigration forms. And every ACE staffer makes a point of entering the client into the system. However, that is about as far as it goes for using the software. Staff complain that it is too difficult to learn how to utilize the case management functions and that they do not always work.

An ACE counselor received a notice from USCIS that his client had been denied an extension of her employment visa. The counselor was busy that day and decided to wait until the following week to contact the client. He did not put a reminder in the immigration software. After a week, the notice was at the bottom of a pile of papers on the counselor's desk and he had forgotten all about it. His client remained in the U.S. for another year and several months, until her mother fell gravely ill and she wanted to go home to visit her. She came to the ACE office to inquire about the status of her case. The counselor was mortified to have to tell her that, because of his error, she had overstayed her status for more than a year. She had accumulated more than a year of unlawful status. Therefore, if she left the U.S. to visit her dying mother, she would activate a ten-year bar to permanent immigration. She had no one to qualify as a relative to get a waiver of the 10-year bar.

ACE decided to get more expensive software that comes with solid training and technical support. And the staff made a commitment to learn and use the software faithfully, realizing they had been penny-wise and pound-foolish in their choice of immigration case management software.

### **Software vs. Internet-Based**

There are two basic types of case management systems: software that lives on your own computer system, and web-based systems that save your data remotely. With software, you save all the data on your own computer server. Web-based programs save all the data on their own servers. There are pros and cons to each model. An internet-based system, for example, allows easier remote access to data, but you will need to ensure that the system's security is adequate. Please see attached list, "Immigration Case Management Software," at the end of this chapter, along with selection criteria we explore below.

### **Electronic Files versus Hard-Copy Files**

Due to developments in software, it is now possible to have case files kept solely electronically. While this does present the advantage of not having multiple file cabinets cluttering the office, electronic case files present their own challenges and security concerns.

First, electronic files present a confidentiality concern, especially when these case files are saved on an agency's server. Rarely are limitations in place stringent enough to completely limit access to immigration files by non-immigration legal staff. In addition, provisions would need to be made to recover the files if the server crashed or if the person with access to the files was unavailable for a long or permanent period of time.

Next, the government has not completely developed a paperless application system. Thus it is hard to know what a paperless system will require once created.

Finally, as a program grows, it will need a strict, clear, and enforceable procedure on how and what things are scanned, how case notes are recorded and how files are to be kept secure. The server may not be able to handle additional case managers' work, let alone the cumulative average of years of current files plus those of additional employees.

## **Considerations in Choosing Software**

### **Features of the System**

What are the system's functions? Does it have the ability to:

- Record case notes easily?
- Track billing?
- Track client dates and deadlines? Does this "tickler" system have alerts and reminders?
- Have a calendar function? How dynamic is the calendar?
- Generate reports? What type? How easy is it to produce customized reports?
- Identify the petitioner, beneficiary, and derivatives on the same case? Your system should help your staff easily match the petitioner with the beneficiary and derivatives throughout the case.
- Perform conflicts checks (see "Conflicts of Interest" section under "Case Selection" in Chapter Five)

### **Ease of Use**

- How easy will this program be for your own staff to use? Knowing your staff's technological capabilities, is this program a good fit for your employees?

### **Training**

- Does the company provide training along with the system?
- How extensive is the training?
- Will they provide it for you on-site, or will they provide it from a remote location via the phone and/or internet?
- Approximately how much training time will they provide?
- Will they train each staff member individually, or everyone in a group?
- Does the training cost extra?

## **Technical Support**

- Does the company provide ongoing technical support? Ongoing support is crucial. Without technical support, a program is not worth having.
- How much does the technical support cost? Is it built into the cost of the program?
- How can you access technical support? Telephone? Email? Both?
- What's the procedure for getting assistance—can you speak to a live person, or do you leave a message and wait to hear back?
- Approximately how long does it take your company to respond to technical assistance questions?
- Will your agency need internal IT staff support, or will you need outside IT consultants to install and run this system?

## **E-filing and Remote Access**

- Does the system permit e-filing with USCIS?
- Can users access the system from remote locations (i.e. from outside the office)?

## **Cost**

- How does the company bill for this system?
- What are the costs, if any, of licenses for users?
- What is included in the cost?

## **Security Controls**

Physical and technological security:

- Does the program use encryption?
- What are the backup and retrieval procedures?
- Where is the server located? Is there a backup server at a different location? Is there adequate security protocol limiting access to the servers?
- What security procedures are being used to ensure the integrity and privacy of stored information?

Access security:

- Who controls user access?
- Who are the users? Have they been sufficiently trained and sensitized to security precaution?
- Does the organization have adequate personnel policies and practices to ensure integrity of the system and stored information?

Once you have researched various options and narrowed down your choices, it is a good idea to speak to immigration legal providers who use these systems. Find out what their real-life experiences have been: what they like and dislike about their systems. If you are part of a network, your network will be a good place to find providers to talk to. If you are not part of a network, try contacting other agencies in your area. You can also ask the company itself for customer references; make sure to let them know you want to speak to nonprofit agencies.

## **Law Library**

Every immigration legal program must have a library of immigration research materials. There are many materials available online, but note that you will need at least some materials in printed book form. Keep in mind that because immigration law changes constantly, some resources will need to be purchased each year. There is no way around this; reliance on an outdated copy of the Immigration and Nationality Act could have disastrous consequences for a client—and for your agency, which might be liable for malpractice.

Encourage your staff to make frequent use of the library materials. The best representatives understand and are comfortable using legal reference materials. If you find that your books are still stiff and unread by the end of the year, consider getting training for your staff on doing basic legal research.

### **Minimum Library Requirements**

In order to be able to offer competent legal advice to clients, you will need to have various reference materials. Every agency that offers immigration legal services MUST have access to, at a minimum:

- An up-to-date copy of the Immigration and Nationality Act (INA)
- An up-to-date copy of Volume 8 of the Code of Federal Regulations (8 CFR)

### **Where to Buy the INA and 8 CFR**

Various publishers put out editions of the INA and 8 CFR. The text of these editions is the same. Each lays out the law and regulations slightly differently. You may prefer one edition to another; in the end, however, the least expensive edition will be sufficient.

The federal government's Government Printing Office publishes the INA and 8 CFR annually. You may find a GPO physically located near you, or you can order it through their website:

<http://bookstore.gpo.gov/>

Both of these resources are located on-line [www.uscis.gov](http://www.uscis.gov). However, both are dense documents and are more easily used in their hard-copy format. CLINIC recommends that both resources be available in every immigration legal services office.

### **Other Resources**

- The American Immigration Lawyers Association: <http://www.ailapubs.org/booklist.html>
- ILW.com: <http://www.ilw.com/store/>
- Lexis Nexis: [http://bookstore.lexis.com/bookstore/catalog?action=prodlst&cat\\_id=T&pcat\\_id=31](http://bookstore.lexis.com/bookstore/catalog?action=prodlst&cat_id=T&pcat_id=31)
- The Immigration Advocates Network: [www.immigrationadvocates.org](http://www.immigrationadvocates.org)

The following books are widely popular among immigration practitioners because they contain the immigration laws and regulations. They are updated regularly. Be sure to budget for new copies.

### **General Treatises on Immigration Law**

The program will also need a general secondary source on immigration law; the most widely used is *Kurzban's Immigration Law Sourcebook*. This is an excellent overview of immigration law. It is updated every two years. It is available at <http://www.ailapubs.org/>.

*Immigration Law and Procedure* by Charles Gordon, Stanley Mailman, and Steven Yale-Loehr is an excellent source (though expensive). It is available through LexisNexis at: <http://bookstore.lexis.com/bookstore/product/10420.html>

There are numerous other treatises on immigration law available. As you determine which areas of law your program will concentrate on, you will want to add books on those topics to your library.

### **Subject-Specific Books**

As your program grows, you will want to add secondary source materials on specific areas of immigration law, such as naturalization and citizenship, family-based immigration, and crimes and immigration. The subjects you choose should be tailored to the nature of your program's practice.

## Training Manuals

Your immigration library will also contain manuals from trainings your staff have attended. These can be valuable learning and research tools.

## Periodicals

There are several periodicals that cover developments in and analysis of immigration law, including:

- *Interpreter Releases*, published weekly: [http://west.thomson.com/store/product.aspx?r=5085&product\\_id=15867076](http://west.thomson.com/store/product.aspx?r=5085&product_id=15867076)
- *Bender's Immigration Bulletin*, published twice a month: <http://bookstore.lexis.com/bookstore/product/10762.html>

## Email Updates

Both of the following email updates are in-depth and detailed, and both can be a very useful addition to your immigration library:

- Immigration Daily: emailed daily: <http://www.ilw.com/immigdaily/>
- Bender's Daily Immigration Bulletin: [www.bibdaily.com](http://www.bibdaily.com)

## Other Ways to Access Immigration Library Materials

It is a best practice to have up-to-date copies of the Immigration and Nationality Act and 8 CFR in your office, along with as many secondary sources as you can reasonably afford. Some programs supplement their own libraries by getting access to local law libraries. If there is a law school in your area, consider exploring whether your staff might be able to get free or low cost access to the school's library. Note that this is not a substitute for having basic research materials on hand in your office—it is not realistic to think that staff will have the time to visit a law school every time they have an immigration legal question—but a law library can be a very useful resource for occasional complex questions.

## Insurance

All programs, new and existing, large and small, rural and urban, need some form of insurance to protect against legal malpractice. One lawsuit can bankrupt a program, its staff, and its board. Attorneys should have legal malpractice insurance. Board of Immigration Appeals (BIA) accredited representatives do the same legal work as attorneys and should also have legal malpractice insurance. Boards of directors and non-legal staff working at programs doing immigration legal work need to have errors and omissions insurance.

Malpractice insurance protects the agency from liability when the agency makes errors that harm a client. If your agency's BIA accredited representative or attorney misses a filing deadline and as a result your client is ordered removed, your agency will very likely be found to have committed legal malpractice. If, however, your client is deported because the judge after hearing all the evidence and arguments did not agree that she deserved relief from removal in a case, that is not necessarily legal malpractice. Due to the deadline-rich environment of immigration legal practice, it is important to have appropriate malpractice coverage to protect your program and agency.

A few providers of legal malpractice insurance will also provide such insurance to BIA recognized programs with BIA accredited staff and no attorneys. Programs with accredited representatives but no attorneys should make sure that they are insured for legal malpractice.

Employees and members of the board of directors should be protected by Directors and Officers (D & O) insurance. This protects them from liability arising out of negligence and/or some reckless and even willful misconduct in their supervision

of the agency and their volunteer work on behalf of the agency. Such policies are very common and fairly standard and are offered by all major insurance companies. Here are a few examples of lawsuits that may be brought against your agency:

- Asset mismanagement;
- Not providing services when there was no reasonable reason not to;
- Wrongful termination of an employee;
- Discrimination against an employee or client;
- Harassment of employees or clients. The most common claims are for sexual harassment.

Having D & O insurance will provide a legal team to safeguard the agency and the directors and officers. Otherwise, your agency might incur extremely costly legal fees dealing even with non-meritorious claims. All policies are different and you must shop carefully to get a good policy.

Required documents for a price quote vary from one provider to another; however, here is a list of common documents legal insurance providers may need to assess your application:

- History of past coverage and/or claims, if any;
- A thorough explanation of offered services, your expertise, and description of your client base;
- A breakdown of sources of revenue since the coverage fee is based on the income;
- A sample retainer agreement (contract between clients and agency);
- A professional services organizational chart;
- Biographies of all BIA representatives including accreditation date and planned renewal date;
- The most recent current financials;
- Printed materials about the agency and/or its legal immigration program;
- Other documents as applied to individual providers.

If your immigration program is new and not all the program policies are in place yet, you should still submit the application and try to work out a schedule with your insurance provider to submit the required documents. The insurance coverage applies retroactively to the date the application was submitted. Although the insurance application may look overwhelming and most are catered to lawyers, do not let this stop you from getting this very necessary and valuable protection for the program. Most insurance providers are also willing to walk you through the insurance application process.

Each provider has a different policy in evaluating an application, but in general every application is individually reviewed. The coverage and cost depend on your agency's staff, claimed expertise, client base, amount of deductible, and source of revenues and fees. Since purchasing liability insurance individually is a lot more expensive than buying group insurance, you should also consider buying insurance coverage through a parent or national organization.

If your agency needs to buy coverage for a few BIA accredited representatives, negotiate for a discount or to pay the premium in installments. Here are some questions you should ask your insurance providers:

- What is the scope of coverage? Who can be insured under their legal insurance coverage (i.e. full- and part-time employees, contract lawyers, volunteer lawyers, paralegals, board members)? What claims are covered and not covered?
- What factors do they use to determine your rate? What is the highest available limit of liability? What is the range of deductibles? How does your deductible affect your premium?
- Can you pay in installments?

## Sub-offices

Increasingly, immigration legal service programs are expanding their capacity to serve their communities. This often results in the opening of new sub-offices in and around the community. These sub-offices should be managed just like the main office location. Sub-office staff should follow the same policies and procedures as the main office location. All staff should be covered under the same insurance policies as the main location. Confidentiality policies, case management software policies, and other considerations mentioned in this chapter should all be in place in sub-offices.

## **Marketing Tools**

While this subject is explained in depth in Chapter 7, it is worth mentioning that an immigration legal service program should have tools at hand to market its services in the community. Such tools can include an up-to-date website, listing current services offered and contact information. Other tools can be a brochure or flyer advertising services, a visible sign letting clients know where the office is located, and an ad in local newspapers or other media outlets listing available services. These tools make your program visible in the community.