

Practice Advisory: Preparing your Agency to Provide Immigration Legal Services during the COVID-19 Pandemic

March 17, 2020

During these troubling times of widespread business closures and regional lockdowns, you are facing some hard decisions over what to do with your immigration program, staff and clients. How will you keep your immigration program running and continue to serve clients? What steps do you need to take to ensure your immigration program is adequately prepared? Below are some ideas for your consideration.

General Prevention and Preparation for your Office

- ✓ Follow Centers for Disease Control guidelines about prevention strategies including sanitizing spaces, reporting illnesses, social distancing, etc.
- ✓ Provide regular and clear communications with staff about CDC and/or state/local guidelines, plus office policies on preventing the spread of the virus and preparation in event of office closure and staff having to work remotely.
- ✓ Designate staff member(s) to work on preparing the office for closure and for staff to work remotely. This will help streamline the process.

Ensure Continuation of Services and Client Communication

- ✓ Inform clients about steps the agency is taking to ensure the safety and health of staff and clients while the office remains opened. Refer to the CDC, state and local guidelines.
- ✓ In the event the office will close or there is a reduction of staff in the office, inform clients in advance via website, email, call and text how to:
 - Contact their legal representative;
 - What they can expect during this time from their legal representative; and
 - Reassure clients that their cases will not be neglected and will continue to be handled by staff.
- ✓ For individuals seeking immigration legal services or trying to reach the office for other general matters consider updating voicemail with multilingual messages, posting signs by the entrance of the office and on the agency website explaining what services, if any, will be offered, how to schedule an appointment and who to contact for other general matters.
- ✓ Email partners, vendors and external contacts about office closures.

Preparing Staff to Work Remotely

- ✓ Make sure staff has the equipment and technology to carry out their individual responsibilities such as laptops, printers, phone lines, internet connection and office supplies. If staff will be using their personal lines to contact clients, make sure they block their phone number to protect their privacy. In addition, you will need to decide what type of video conferencing web platform you and your staff will use to communicate with each other and with clients.

There are many options available if you are considering using video conferencing with clients. Some are free, such as Skype and Google Hangout, while others charge a monthly fee. It's important to assess what you need and can afford and to thoroughly understand the security features of each option. Web-based communication is either partially or fully cloud-based. This means data is processed and possibly stored on servers owned by third parties and your organization is entrusting its data to these vendors.¹ You have an ethical obligation to thoroughly vet the technology provider that will be hosting and storing your data to ensure your communications with clients are kept confidential.²

It is important to note the differences in security of these web-based platforms. Tools such as Skype, Google Hangout and others have what is referred to as transport encryption.³ This prevents eavesdroppers from listening in but it does not block the provider of these tools from listening. Whereas end-to-end encryption, such as Skype for Business, WebEx and Zoom, prevents all eavesdropping.⁴ In order to decide which tool is sufficient for your communication, refer to the ABA's Formal Ethics Opinion 477. In addition, it is important to confer with your state bar for any guidelines regarding communication with clients over the internet.

The ABA guideline on communications with clients is that a lawyer can communicate with clients over the internet without violating the model rules of professional conduct if the lawyer has undertaken reasonable efforts to prevent inadvertent and unauthorized access to information regarding representation.⁵ However, if information is highly sensitive -- whether by nature, agreement with client or by law -- the lawyer is required to take extra precautions to guard against disclosure.⁶ "In that

¹ Black, Nicole "It's now a Tekkie world. Top video-conferencing tools for lawyers," at www.abajournal.com/web/article/top-video-conferencing-tools-for-lawyers

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See American Bar Association Formal Ethics Opinion 477 at www.americanbar.org/content/dam/aba/images/abanews/FormalOpinion477.pdf

⁶ *Id.*

opinion, the Ethics Committee concluded that unencrypted communications may not always be sufficient for client communications. Accordingly, the committee determined that lawyers must assess the sensitivity of the information to be shared on a case-by-case basis and then choose the most appropriate and sufficiently secure method of communicating and collaborating.”⁷ It is sufficient to say that end-to-end encryption may not be needed for most communications, unless you are handling highly sensitive information or believe there is a risk government agencies may attempt to obtain that information.⁸ For many, web tools with transport encryption will be sufficient.⁹

- ✓ It is a good idea to inform your insurance carrier that staff will be operating remotely, should coverage need to be adjusted for the change in circumstances.
- ✓ Make sure equipment and technology are tested before implementing remote work.
- ✓ Ensure a technology specialist is available to handle equipment or technology breakdown for staff working remotely. You may need to contract with an external vendor or designate someone in-house who is capable of handling these issues for the agency.
- ✓ Set staff expectations when working remotely.
 - Ensure regular communications with staff via video conferencing or messaging tools. It may be helpful to require staff to be available at certain times during work hours. You may also find having more frequent staff meetings or require staff to be available via a messaging tool allows more accountability and oversight.
 - You may need to work with staff about setting their work hours. Is there flexibility for those who need it due to child care requirements as a result of school closures?
 - Reiterate with staff your policies on confidentiality of client communications and files when working remotely. For instance, staff should not be working on case files where case information is visible to family members. Case files, if taken home, should be stored in a confidential and secured location, preferably a locked file cabinet, when not being used. Files should not be taken outside of the home unless it is absolutely necessary. For those organizations utilizing electronic files, the same rules apply as to where and how case information is accessed. When communicating with clients, find a confidential space in the home where conversations can't be overheard and clients do not hear other family members.
 - Reiterate sections of case management policies and procedures that apply when working remotely, such as case maintenance and maintenance of client

⁷ Black, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

communications. For example, legal representatives must maintain case notes and not overlook this duty while working remotely and online.

- ✓ Have staff go through their caseload and prioritize the cases
 - Which cases have upcoming deadlines? Can you file the case before program closure? If you can't, how will you work with your clients on these cases? You should speak with your client about a course of action, which may require you to forward their application electronically, review the application with them over the phone, and they send you the signed application after the review. This process will take time and staff needs to account for this. As of March 16, 2020, USCIS has not issued any guidance on whether they will extend deadlines for applications or whether copies of applications will be sufficient in lieu of original signatures.
 - Update or create a shared, online staff calendar of appointments and deadlines so colleagues, particularly program directors, are informed of responsibilities in the event someone is unable to fulfill them.
 - You may need to designate someone or have staff rotate who will go into the office to receive and open mail, scan or upload correspondence for staff, make notations in the client files (paper and/or digital), make copies of applications and mail them.
 - For all other cases, staff should create a checklist or action plan of what needs to be done for the cases, which cases can be done remotely and what paperwork or files need to be brought home to complete them. Staff should refer to your agency's case management policies and procedures regarding taking client files out of the office and working on them at home.

- ✓ Decide with staff how to handle people seeking services
 - Will there be an answering machine for the immigration program? Who will check it and how often?
 - What services can you provide for those seeking services? Will you limit your services to screening, intake and consultation, or provide representation on a limited number of immigration applications? If your office plans to open new cases, how will you have clients sign retainer agreements, collect fees, receive documents, etc.?

Tips for Staff to Work Remotely

- ✓ Set your parameters to minimize distractions from family members and inform them when you will be available.
- ✓ Designate a permanent workspace at home so you feel you are going into the office. It is important to delineate your work and home life so you have a balance. It can be very easy to have work life spill into your time with family and friends.

- ✓ If flexible work hours are required, inform your supervisor in advance when you will be working and discuss activities you plan to accomplish during this period.
- ✓ Some people like to dress the part at home to feel like they are at the office. Wearing pajamas or comfortable clothing may affect your mood, alertness and professionalism when speaking with clients or co-workers.
- ✓ Make a list of things you want to accomplish for work and for home and check that list on a daily basis. Separate those items and save the home activities such as chores for after work hours or during breaks or lunches so they do not become a distraction.
- ✓ Set a regular work schedule and stick with it as much as possible. Try not to work after hours, if possible. For some, this may be difficult, given they may have to juggle multiple responsibilities such as child care. This may be the best time to sit with your partner and/or children to discuss the schedule for the next few weeks when everyone will be home. Can you rotate with your partner on child care responsibilities? What activities can your children engage in independently? Can you share child care responsibilities with your neighbors who have children, assuming they are healthy and abiding by CDC guidelines of staying away from public spaces and maintaining social distancing?

Other Resources on Preparing your Immigration Program

- ✓ Centers for Disease Control and Prevention, Coronavirus Disease 2019, COVID-19, “Interim Guidance for Businesses and Employers” at www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html
- ✓ Catholic Charities USA, COVID-19 Resources available at www.catholiccharitiesusa.org/resource/covid-19/
- ✓ [“Pandemic-Proof Your Immigration Practice” by Charity Anastasio, Practice Management Advisor, Practice and Professionalism, AILA Doc. No. 20030640, Posted March 6, 2020 \(Available for AILA members only\).](#)
- ✓ “How Working Parents Can Prepare for Coronavirus Closures” by Steward D. Friedman and Alyssa F. Westring, March 10, 2020, Harvard Business Review, available at hbr.org/2020/03/how-working-parents-can-prepare-for-coronavirus-closures
- ✓ “Remote Legal Support: A Guide for Nonprofit and Pro Bono Innovation” by Pro Bono Net and Immigration Advocates Network, March 10, 2020, available at www.immigrationadvocates.org/nonprofit/alerts/726800.Remote_Legal_Support_A_Guide_for_Nonprofit_and_Pro_Bono_Innovation