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Ethical Issues in Immigration Law

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Webinar Agenda

- Sources of Ethics Rules
- Why Care about Ethics Rules
- Top Issues of Concern
- Establishing a Client - Representative Relationship
- Selected Rules
- Retainer Agreements
- Best Practices

Is This a Problem?

Your client Dave is an LPR applying to naturalize. During the interview, you learn that Dave immigrated through a VAWA self-petition as the abused spouse of a U.S. citizen. Dave tells you he suffered terrible abuse but he reveals that he presented a fake marriage certificate in order to gain his status. Is it a problem to help Dave with his application for citizenship?

Is this a Problem?

- You agree to represent USC Victor and his wife Claudette in a marriage adjustment. You also agree to submit an I-130 for Claudette's 17- year -old son Abraham in Nigeria. A week after the initial consultation, Victor calls to tell you to stop the processing of the I-130 for Abraham since he thinks bringing him to the US will interfere with his relationship with Claudette. He also tells you he lost his job and can't afford another person in the house. He tells you not to tell Claudette about his job and the I-130 since he knows she will be upset.
- Can you keep this information from Claudette? Can you continue to represent both of them?

What are Ethics Rules?

- Attorneys are bound by a code of professional responsibility. Each state bar has its own code of ethics. The ABA also has a model code of ethics.
- Although these ethics rules aren't binding on accredited representatives, they should be viewed as "best practices" guidance for representing clients in immigration matters.

Sources of Ethics Rules

- American Bar Association (ABA) Model Rules of Professional Conduct
- State Code/Canon of Ethics or Professional Responsibility
- INA §§ 240(b)(6), 274C
- 8 CFR § § 292.3, 1003.101 to 1003.109

Ethical Rules in INA and CFR

INA Bars:

- Ban on "frivolous behavior"
- Document fraud penalties

8 CFR Bars:

- Grossly excessive fees
- False statement of material fact or law
- Obnoxious conduct
- Ineffective assistance of counsel
- Falsely certifying document as true copy of original

Why Care About Ethics Rules?

- What do you think?

Top Issues of Concern

- Creating client/representative relationship
- Scope of services
- Confidentiality
- Communication
- Conflict of Interest
- Competence
- Due diligence
- Meritorious claims
- Candor to the tribunal

Establishing Representative/Client Relationship

- Established by agreement
- Usually express agreement
- **BUT** can be implied
- Best practice: non-engagement letter

Is This Person Your Client?

Listen to this interview and:

- (a) imagine you are representative
- (b) imagine you are potential client

Is there a mutual understanding?

Who Decides Scope of Representation?

- You are an accredited representative, and new client, USC Clarice, wants you to file a petition for her sister in Belize
- Visa category won't be current for many years
- What is the service you are agreeing to provide?

G-28 Notice of Appearance

- Immigration regulations require filing G-28 whenever the advocate is involved in "practice" or "preparation"
- Practice includes preparation of any application or petition
- Preparation includes studying the facts of a case and giving advice
- Most forms now allow representative to limit representation to form completion and not file G-28

What is the Duty of Confidentiality?

- Model Rule: Client-Lawyer Relationship
 - A lawyer shall not reveal information relating to the representation of a client unless
 - the client gives informed consent, OR
 - the disclosure is impliedly authorized in order to carry out the representation, OR
 - an exception to confidentiality applies

Confidentiality Challenges

- Parent agency not a legal agency
- Office space (lack thereof)
- Small community – clients asking questions outside office
- Clients bringing friends, family to interview with legal representative

Communicating With Clients: Is there a Rule?

Miranda Lopez from Honduras comes to your office. She is very upset because she just received a denial of her VAWA self-petition for failure to respond to an RFE. She tells you she had a representative who filed her file self-petition, but he never contacted her about RFE. In fact, she had a very hard time getting in touch with him after case filed. She had some questions, but he would take weeks to respond to her calls and did not always respond.

Model Rule on Client Communication

- Keep client informed
- Consult with client about strategy
- Comply w/reasonable requests for info
- Advise client re: limits on ability to render services
- Provide adequate information for client to make informed decisions

Not Just for Lawyers: Disciplinary Rules and Client Communication

Grounds for discipline where practitioner:

- Fails to maintain communication with client throughout duration of client-practitioner relationship. It is the obligation of the practitioner to communicate in a language that client understands.
- A practitioner is only under obligation to attempt to communicate with his or her client using addresses or phone numbers known to practitioner.

What is Conflict of Interest?

- One client has interests “adverse” to another client
- Those adverse interests bar advocate from effectively representing both clients

How Many Clients?

- LPR Binh is petitioning for his wife Lan, and her teen-age daughter Yen
- Cecile is applying for adjustment of status, and her cousin Lucille wants you to help her prepare an affidavit of support
- Yolanda is applying for U status; her parents and her sister are derivatives

With Multiple Clients:

- No taking sides: can't favor one client's interests over others
- No secrets between multiple clients on same case

What Can You Do Here?

You represent USC Jacob and his undocumented wife Hazel in a marriage-based adjustment. Now Hazel tells you Jacob is abusing her. Your office is only one within a hundred miles doing VAWA and U cases.

- Can you represent either Hazel or Jacob?
- Can you give Hazel info about VAWA and U applications?

What is Competent Representation?

Model Rule:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Competent Representation?

- You've represented clients in family-based cases but never filed a VAWA self-petition. Your new client seems to qualify. Can you take the case?
- Your client's waiver case was denied and she wants to appeal to the AAO. You are not a native English speaker and you have never written a legal argument, but a colleague offered to give you a sample brief. Can you take the case?

What is a Meritorious Claim?

Your client, from Mexico, is in removal proceedings and is the beneficiary of a 4th preference petition that will likely be current within the next year. In order to buy time, you have proposed that your client apply for withholding of removal. The judge's docket is very backlogged, and your client's case will likely be set for hearing in 2019. By then, your client will have a current priority date and can adjust status. Is this a good plan of action?

What is Candor to the Tribunal?

Model Rule 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

- (1) make false statement of fact or law to tribunal or fail to correct false statement of material fact or law previously made to tribunal by the lawyer;
- (2) fail to disclose to tribunal legal authority in controlling jurisdiction known to lawyer to be directly adverse to position of client and not disclosed by opposing counsel; or
- (3) offer evidence that lawyer knows to be false. If lawyer, lawyer's client, or witness called by lawyer, has offered material evidence and lawyer comes to know of its falsity, lawyer shall take reasonable remedial measures, including, if necessary, disclosure to tribunal. A lawyer may refuse to offer evidence, other than testimony of a defendant in a criminal matter, that lawyer reasonably believes is false.

What's the Right Thing to Do?

Daniel EWI'ed in 2000 and wants to adjust now as the spouse of a USC. Preparing for his interview, he tells you he recently back to Mexico for 3 weeks and EWI'ed on his return. You tell him he's now ineligible for adjustment, and he suggests neither of you mention this trip since USCIS doesn't know about it. Is this the right thing to do?

Retainers: Typical Components

- Program's commitment to confidentiality
- Specific services to be provided
- Fees, payment plan
- Circumstances triggering termination
- Commitment to provide diligent representation
- Client's right to be informed of all options, consequences of representation, updates on case status
- Client's authorization of representation
- Client's agreement to be truthful
- Client's agreement to appear for all scheduled meetings, appts.
- Client responsibility to inform program about address and phone changes
- Grievance procedure

BEST PRACTICES

- Review retainer to assure that service to be provided clearly delineated
- Ask questions – don't give advice when you are uncertain
- Don't be afraid to acknowledge what you don't know
- Have good case management in place to assure diligent representation, compliance with external deadlines, timely, clear communications with clients
- Check for client conflicts
- Consider conflicts in advance; include policy in retainer agreement



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QUESTIONS?



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