



Ethics in Today's Immigration Practice

"The purest treasure mortal times afford is spotless reputation; that away Men are but gilded loam or painted clay." —William Shakespeare, *Richard II*, Act I, Scene 1

IN AUGUST 2003, an AILA member from Florida was sentenced to more than eight years in prison after being convicted of fraud and conspiracy in the filing of thousands of religious worker and multinational executive petitions. The week of his sentencing, another AILA member was arrested in Virginia, allegedly in connection with filing phony labor certifications. Three other members in Washington, D.C., Maryland, and Virginia have been arrested on similar charges, and an Assistant U.S. Attorney in northern Virginia has announced his intention to prosecute AILA members.

I am not prejudging the attorneys involved, but I am calling for vigilance in the search for possible overzealous prosecution, particularly of our members who represent middle-eastern clients. Frankly, I suspect the Department of Justice will find few, if any, criminals among our ranks. Nevertheless, the chilling specter of AILA members as DOJ targets draws attention to lesser transgressions and the need for a comprehensive approach to raising the ethical standards of our bar.

The Downward Spiral

In the District of Columbia, immigration matters receive the lion's share of complaints against attorneys. We practice in a complex area of law, facing an intransigent agency with adjudicators so poorly trained that decisions appear utterly arbitrary and lawless. Potential or current clients present us with approved applications that never should have been filed as well as summarily rejected petitions that fulfill all the statutory and regulatory criteria. Clients strike out against us out of frustration stemming from inexplicable and unreasonable processing delays, nonsensical USCIS requests for evidence, and negative decisions be-

cause they have no weapons to fight against the government's indifference.

In a distressing corollary, AILA members increasingly find themselves filing complaints against other members for ineffective assistance of counsel under the *Matter of Lozada* rubric. The BIA has left us little choice. A spiral of growing mistrust leads not only to bar complaints, but a crisis of confidence in ourselves, as well as between attorneys and clients and between attorneys and the agencies before which we practice.

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Responsibility as an Association

AILA was founded over a half-century ago "to elevate the standard of integrity, honor, and courtesy in the legal profession; and to cherish the spirit of cooperation among members thereof."¹ We must rededicate ourselves to the highest ethical standards, and continue our decades of mutual respect and collaboration to make AILA's name synonymous with integrity and honor.

Attorneys run afoul of the code of professional responsibility by becoming buried under the blizzard of paperwork inherent in every law practice, resulting in improper commingling of client funds and lack of attention to client matters. Solo practitioners and small firms, who comprise a very large percentage of our membership, are sanctioned more often than larger firms that have better developed infrastructure.

Inherent potential conflicts of interest through dual representation in both family matters and employment-based cases heighten the risks of violating ethical standards for immigration practitioners. Most transgressions stem from haste, overwork, and ignorance, not evil intent. Clear communications with our clients—from the initial written fee agreement specifying the work to be done to the final letter closing the file at the end of representation—can help break the cycle.²

In 1998, the AILA Board of Governors passed a resolution urging each chapter to establish an ethics committee and to hold an annual continuing legal education event devoted to ethics. I applaud the chapters that do so and urge the others to follow suit. But ethics must be more than an annual event; it must be engrained in every action we take each day we represent a client.

To that end, our conference planners will encourage all speakers to include ethical issues within their specific topic areas. *Immigration Law Today* will begin featuring articles on professional responsibility. The Member Services Committee and Professional Responsibility Committee will work together to propose and implement a program for AILA members to inform them of resources already available to them (*e.g.*, chapter ethics officers, relevant publications and seminars, and liability insurance); to provide additional practice support tools; and to enhance members' understanding of their professional responsibility.

Ethical practices, based on an attorney's reputation for integrity, competency, and honesty, are also profitable practices.

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Endnotes

¹ AILA Bylaws, Article I.

² For more information on how you can improve the lines of communication between you and your clients, see Tech Notes p. 28. 