

Oregon  State Bar

*LEGAL SERVICES  
PROGRAM*

IMMIGRATION PRACTICE AND  
PERFORMANCE STANDARDS  
AND GUIDELINES

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# I. PREFACE

## INTRODUCTION

Oregon Senate Bill (SB) 1543<sup>1</sup> directs the Oregon State Bar’s Legal Services Program<sup>2</sup> to “adopt standards and guidelines for the provision of . . . legal services to individuals on immigration matters.”

These standards and guidelines – organized into (bolded) standards and related commentary, serving as the implementing guidelines – are intended to delineate a set of benchmarks or measures for immigration practitioners and the organizations that employ them, as well as a non-exhaustive enumeration of examples of how one might go about complying with those measures. They are not rules or requirements,<sup>3</sup> but explanations, examples, and tools to benefit experienced and new advocates to the field.

With this guidance we offer a caveat: There is no single “correct” way to function as an immigration advocate; however, these standards and guidelines, culled from a variety of widely-respected sources and developed through community input, seek to signal an estimation of best practice indicators.

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<sup>1</sup> See <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1543/Introduced>. Prior to the passage of SB 1543, in December 2021, the Oregon State Bar’s Legal Services Program entered into an agreement with Innovation Law Lab, who at that juncture managed the [Equity Corps of Oregon](#) (ECO) program, to provide fiscal and regulatory oversight for the program’s legal service providers. Per that agreement, the OSB developed a set of program-specific guidelines, which remain in implementation as of the drafting of this document.

<sup>2</sup> On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578. The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 O for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

<sup>3</sup> Many of the guidelines incorporate or reference the Oregon Rules of Professional Conduct, which are mandatory, where applicable.

## SCOPE, APPLICATION, AND RELATIONSHIP TO LEGAL SERVICES PROGRAM STANDARDS AND GUIDELINES

These standards and guidelines, drawn significantly from the American Bar Association’s Standards for the Provision of Civil Legal Aid,<sup>4</sup> are meant to provide a framework for immigration practice and to facilitate the provision of high-quality immigration legal services in Oregon. They do not account for all possible circumstances of immigration practice. As such, this document does not supplant the professional judgment of an attorney or accredited representative or the requirements set forth in the Oregon Rules of Professional Conduct.

These practice and performance standards and guidelines have been integrated into the Legal Services Program Standards and Guidelines<sup>5</sup> so that all programs managed and funded by the Oregon State Bar’s Legal Services Program are coordinated to a single corpus of regulatory principles. Additionally, they will be referenced as practice benchmarks in the Oregon State Bar’s Legal Services Program’s contracts for the delivery of immigration legal services.

## CONTRIBUTORS

This document was drafted by the staff of the Oregon State Bar’s Legal Services Program, incorporating significant contributions from an SB 1543 Work Group. The Work Group, consisting of immigration legal service providers (non-profit representatives and members of the private bar) from across the state, community advocates and navigators, and other key stakeholders, participated in a series of listening sessions, each focusing on a category of practice. Through synchronous and asynchronous feedback, the participants provided input to illustrate and explain each of the standards, contributing to the guidelines and commentary included here. Innovation Law Lab, our colleagues and program development partners, offered immeasurable support within the workgroup and in honing the final iterations of this document.

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<sup>4</sup> See [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/).

<sup>5</sup> Available at [https://www.osbar.org/\\_docs/lsp/LSPStandardGuidelines.pdf](https://www.osbar.org/_docs/lsp/LSPStandardGuidelines.pdf).

## II. GLOSSARY OF TERMS

**Representative:** The term representative is used here to describe individuals authorized to practice immigration law before the federal agencies that adjudicate those matters.

Those individuals include attorneys, defined by regulation as “any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law;”<sup>6</sup> and DOJ Accredited Representatives.

The latter are defined as “individual[s] whom [the Executive Office for Immigration Review] (EOIR) has authorized to represent immigration clients on behalf of a recognized organization, and whose period of accreditation is current and has not expired.”<sup>7</sup>

**Immigration Court Proceedings:** This term is used to refer to the various proceedings conducted through the Department of Justice’s Executive Office for Immigration Review (i.e. the Immigration Courts). While most are removal proceedings pursuant to section 240 of the Immigration and Nationality Act (INA), the Immigration Courts also have jurisdiction to hear deportation proceedings, exclusion proceedings, rescission proceedings, credible fear proceedings, reasonable fear proceedings, claimed status review, asylum-only proceedings, withholding-only proceedings, and streamlined removal proceedings.<sup>8</sup>

**Federal Immigration Agency:** Various agencies adjudicate immigration matters; this term is used to group them together. The agencies include the Executive Office for Immigration Review (EOIR), the United States Citizenship and Immigration Services (USCIS), and the United States Department of State.

**Affirmative Immigration Representation:** This term refers to the representation of individuals proactively seeking to obtain or change their legal immigration status, whether within or outside the United States.

**Defensive Immigration Representation:** This term refers to the defense of individuals and families facing Immigration Court proceedings, including those held in immigration detention.

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<sup>6</sup> 8 C.F.R. §1001.1(f).

<sup>7</sup> 8 C.F.R. §1292.1(a)(4).

<sup>8</sup> Executive Office for Immigration Review, Immigration Court Practice Manual, pg. 103, available at <https://www.justice.gov/eoir/reference-materials/ic>.

# III. OBLIGATIONS OF AN IMMIGRATION REPRESENTATIVE TO THEIR CLIENT

## DIRECT CLIENT INTERACTIONS

**Initial client encounters should afford an opportunity for the client to explore their desired outcomes and goals (i.e., their stated interests); for the immigration representative to explain the nature and scope of their relationship to the client; and for the establishment of the foundational elements of the client-representative relationship.**

Commentary:

- A. Exploring the client's stated interests
  - a. Eliciting a client's desired outcomes and goals demands, first and foremost, a perspective shift. A representative should challenge themselves to step out of the traditional binary mindset of winning or losing a case on the merits and instead be open to what success might look like from the client's perspective. For clients in immigration matters, a successful outcome may be returning to their home country or simply ending their Immigration Court proceedings, regardless of the immigration status they derive from those actions.
  - b. Procedurally, a representative may initiate this conversation by asking open-ended non-judgmental questions about the client's ideal outcome. Alternatively, a representative might begin by first educating the client on what is possible for them within the scope of their individual case, explaining different relief paths, what would be entailed for the client with each, what the relative risks and benefits are to each, all while ensuring that no option is left unexplored. Given the many complexities of immigration law and the substantial amount of information conveyed in this first meeting, visual aids (e.g., a process diagram, short blurbs about each immigration relief option, or a visualization of the varying Federal agencies involved in any given matter) may be helpful to properly educate the client on their options. For the representative, a checklist of items to inquire about at the outset of a case, including which general topics or questions to present to the client, may clarify and smooth the process for both client and representative.
- B. Explaining the nature and scope of the relationship
  - a. Myriad analogies and metaphors exist to describe the relationship between a client and representative – for instance, client as driver, representative as passenger or mechanic. Such linguistic tools can be useful to clarify the unique roles that each will play over the course of representation. Whatever methods a representative employs to detail this

dynamic, the representative should carefully explain such core issues as communication, decision-making, and the boundaries of representation. The latter is particularly key in immigration representation, as the scope of representation in an immigration matter may be defined with unique specificity. For instance, a representative may agree to represent a client in the entirety of their Immigration Court proceedings or only one segment of them in a limited legal services capacity.<sup>9</sup> To facilitate a conversation around scope and roles, a representative should generally rely on a retainer agreement to establish a framework of roles and responsibilities for each party, ensuring terms of art are translated into language accessible to the client.

C. Foundational elements of the relationship

- a. The foundational elements of a client-representative relationship will vary between the parties depending on the length and nature (e.g., limited legal services v. full representation) of the engagement. A representative should encourage a relationship of trust, openness, transparency, deference, and non-judgment, regardless of the length and nature of the engagement.

**Ongoing client contact should be bi-directional, adaptive to the client and the representative’s needs, and appropriate and responsive to the changing nature of the legal matter at hand.**

Commentary:

- A. Ongoing communications between a representative and a client are of particular importance in the immigration law practice setting for several reasons: (1) because of extensive agency backlogs, ranging from one to six years (or more), immigration matters frequently remain pending for an extended period of time; (2) immigration policy rapidly evolves, which may significantly impact a case mid-stream; and (3) immigration matters are often intensively client fact-driven, and altered facts can significantly change the outcome of representation.
- B. Given these fluid and complex dynamics, a non-exhaustive list of scenarios that should prompt proactive representative-to-client contact include:
  - a. Upon receipt of agency correspondence by a representative, particularly notifications of agency decisions (interlocutory or final), deadlines, and required appearances;
  - b. Upon being apprised of changes to immigration law or policy – ideally, prior to their implementation – that might impact a client’s eligibility for relief or the adjudication of their case by an Immigration Judge or agency official; and

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<sup>9</sup> See 8 C.F.R. §§ 1003.17(a) and (b), detailing EOIR regulations regarding limited and full scope representation for individuals in Immigration Court proceedings.

- c. Changes to the representative's capacity to represent their client; for example, in the case of a conflict.
- C. Outside of the above, a representative should coordinate with a client prior to an appointment with the representative's offices or an appearance before an adjudicator where the representative will be present, and upon the filing of a motion, application, or other document with an adjudicating agency.
- D. In representing a client in a legal matter with a prolonged period of case pendency, particularly one where a significant amount of time elapses without observable case progress (e.g., the pendency of form I-918, Petition for U Nonimmigrant Status or the time between a Master Calendar Hearing and beginning preparation for an Individual Calendar Hearing), efforts should be made to establish an agreed upon communication rhythm between the client and the representative.
- E. A non-exhaustive list of instances in which a client should be asked to communicate with their representative<sup>10</sup> are:
  - a. Upon a change to the client's contact information and/or address;
  - b. Upon receipt of agency correspondence; and
  - c. Upon a change in the client's circumstances, such as the client being the victim of a crime; changes in the client's home country; the client's involvement with the criminal justice system (e.g., an arrest, a ticket, or adjudication of a criminal matter); change in a client's family status (e.g., birth/death/sickness of a child, marriage, divorce, separation); or conflicts with a domestic partner.
- F. As to the methods of contact between a representative and a client, it is a best practice for a representative to ask for the client's preferred means (i.e. phone, SMS text, email, WhatsApp) of being contacted and abide by it.

**A representative's interactions with their client should be respectful, non-judgmental, professional, culturally responsive, and sensitive to the client's lived trauma.**

Commentary:

- A. Respectful, non-judgmental, professional client interactions
  - a. A representative acting respectfully and professionally towards a client might also be termed as treating the client with dignity. Respect and professionalism should be maintained throughout the course of immigration representation. A representative should show appropriate respect and deference towards a client's decision about their

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<sup>10</sup> Is it of course incumbent upon the representative, as the subject matter and process expert, to enumerate for the client when and how they would like to be communicated with.



desired outcome in a case. Representatives should also show respect and professionalism by responding promptly to requested meetings and case inquiries from a client, and closely monitoring case-related deadlines. This is particularly important when providing free legal services, where there sometimes exists the sense that a free service does not need to be delivered with a high degree of professionalism.

- b. A non-judgmental stance towards a client is, much like in criminal practice, an issue that relates closely to the philosophy of representation one uses as their advocacy north star. In a merits-agnostic universal representation model, where due process and the dignity offered by accompanying a client throughout their case are idealistic cornerstones, a representative should not judge a client's past decisions and actions, whether or not they render representation more complex. A representative should certainly be honest and clear with a client about the import of, for example a criminal background that could adversely impact an adjudicator's discretionary grant of relief. Yet, the representative should not express their own disapproval of the client's behavior when speaking with the client.
- B. Culturally responsive client interactions
- a. Cultural responsiveness refers to an approach to service that is respectful of, and relevant to, the beliefs, practices, cultures and linguistic needs of diverse consumer or client populations and communities whose members identify as having particular cultural or linguistic affiliations by virtue of their place of birth, ancestry or ethnic origin, religion, and/or preferred language or languages spoken at home.
  - b. In the immigration setting, where representatives and clients may not share a cultural background, a representative should seek to resist the overlay of their cultural values and ideals and instead approach the relationship with understanding, openness and sensitivity. This entails a two-fold approach. First, a representative should take the time to educate themselves on the client's country of origin, ethnic, or religious background. Second, a representative should strive towards self-awareness of their own cultural predispositions, so as not to unconsciously impose them upon the client.
- C. Trauma-informed representation
- a. Whether it be the trauma wrought by the deprivations of immigration detention, a client's experiences in their country of origin, or that brought about by the sheer act of migration, the likelihood of encountering an immigration client with a traumatic history is all but certain. There are many in-depth guides on trauma-informed legal practice<sup>11</sup> and it is a specialty that all advocates should seek to hone. A layer of complexity unique to immigration practice is that many forms of immigration relief (e.g., claims related to

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<sup>11</sup> See, e.g., Patten, Eliza and Kraemer, Talia, *Establishing a Trauma-Informed Lawyer-Client Relationship*, American Bar Association, Center on Children and the Law, October (2014), available at [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/); and Suzuki, Carol M., *Unpacking Pandora's Box: Innovative Techniques for Effective Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 Hastings Race & Poverty L.J. 235 (2007).

asylum, U Nonimmigrant status, and others) are predicated directly on a client's lived trauma and clients are all but required to relate and relive the details of those experiences, often repeatedly and in explicit detail.

- b. A representative's role should be to moderate against traumatic harm to their client by (1) educating themselves on the nature of trauma and its manifestations in order to better spot and address trauma-related symptoms; (2) advocate before adjudicators and agency officials to buffer and mitigate against re-traumatization; and (3) cultivate a trauma-informed practice that follows the needs of and is attuned to the client's lived experiences of trauma.

**Given the importance of a client eligibility assessment (i.e. a client consultation or intake), particularly within a merits-agnostic model of representation, a representative should conduct a far-reaching inquiry to provide with client with a comprehensive overview of potential immigration relief options and the risks and benefits of pursuing each.**

Commentary:

- A. Assessing eligibility for immigration relief taps into four interrelated skill sets: First, a representative's knowledge of immigration law and policy, including current and past shifts in federal and state jurisprudence and statutory law, alongside a variety of agency interpretations thereof; second, the ability to conduct a thorough client interview and investigation of facts pertinent to that law and policy; third, the facility to interweave the latter with the former to offer a finite menu of recourse options that the client may select from; and last, the capacity to relate the essential nature, pitfalls, and risks of the potential courses of action to a client in a manner in which they can easily understand. A failure to leverage these skills correctly could cause the loss of application fees or a client's removal, detention, or arrest. This is all to say that the necessary and frequent work of providing a client consultation is nuanced, intensive, and should be approached with the greatest of care.
- B. Tools and methods that a representative should employ in doing so include:
  - a. An intake document that guides a representative through a series of diagnostic prompts to elucidate facts germane to determining eligibility for relief and that flags potential concerns or areas requiring further investigation.
  - b. A consultation agreement informing the client that the service being provided is for the purpose of determining eligibility for relief only and, if needed, a notation in the document to indicate that further investigation is required in order to arrive at a final assessment of the client's options.
- C. In the instance of a consultation where it is determined that the client is not eligible for any relief whatsoever and no action should be taken, additional care is warranted. A representative should offer the prospective client additional information and guidance, for example the following:
  - a. Future or proposed immigration policy changes may alter the prospective client's eligibility. If such policies are known, the prospective client should be informed as to

- what policy changes would need to occur to render the prospective client eligible and where they can seek out reliable information regarding immigration policy changes.
- b. Similarly, changes in the prospective client's individual circumstances may alter their eligibility for relief. The prospective client should be informed as to what circumstances (within reason) would need to change in order for them to become eligible for relief.
  - c. Immigration representatives, like doctors and other professionals, may vary from one another in their assessment of a client's options. A representative should therefore encourage a prospective client to seek out a second or third opinion.
- D. A representative should inquire about and consider the client's risk tolerance when offering an explanation of relief options, while also offering their own perspective on the likely outcome of pursuing each.
  - E. In a merits-agnostic model of service delivery, where referrals are accepted by providers without regard to the strength of the case, eligibility assessments should be all the more searching and far-ranging. Particularly for removal defense clients, a representative should seek to push the boundaries of the law for their client's benefit and explore all available legal tools within the realm of their ethical duties and obligations.

**A representative should determine the client's preferred spoken language and ensure the availability of adequate interpretation services if they are unable to speak that language themselves.**

Commentary:

- A. Ascertaining a client's preferred language is necessary to foster a strong relationship between representative and client and also to ensure that the information both parties are conveying is received and understood. In immigration practice, whether defensive or affirmative, the agencies that a representative interacts with are required to provide interpretation (or, at least, to accommodate it) and a representative cannot adequately advocate for their client in that respect if they are unaware of the client's needs.
- B. To determine the client's preferred spoken language, a representative should ask and learn about their preference as close to the initiation of representation as possible. Using the word "preferred" is noteworthy, particularly for clients who speak multiple languages. For example, in some Latin American countries, there exists a social stigma around indigenous language use and indigenous speakers may initially accept Spanish as their language of choice. However, with some probing they will reveal that an indigenous language or dialect is actually preferred.
- C. A client's preferred language should be noted in the representative's records to ensure that colleagues of the representative communicate with the client appropriately.
- D. Under the most ideal of circumstances, a representative will be fluent in their client's preferred language. Barring that, a representative should seek out interpretation assistance and employ it during all client encounters, particularly where matters of great import are being discussed.
- E. Representatives should additionally consult Formal Opinion 500 of the American Bar Association's Standing Committee on Ethics and Professional Responsibility relating to "Language Access in the Client-Lawyer Relationship," which states in pertinent part:
  - a. When a client's ability to receive information from or convey information to a [representative] is impeded because the [representative] and the client do not share a

common language, or owing to a client’s non-cognitive physical condition, such as a hearing, speech, or vision disability, the duties of communication...and competence...are undiminished. When reasonably necessary, a [representative] should arrange for communications to take place through an impartial interpreter or translator capable of comprehending and accurately explaining the legal concepts involved, and who will assent to and abide by the [representative’s] duty of confidentiality. The [representative] also should use other assistive or language-translation technologies, when necessary. In addition, particularly when there are language considerations affecting the reciprocal exchange of information, a [representative] must ensure that the client understands the legal significance of translated or interpreted communications and that the lawyer understands the client’s communications, bearing in mind potential differences in cultural and social assumptions that might impact meaning.<sup>12</sup>

**All interactions with or on behalf of a client should be documented clearly and as close to contemporaneously as possible under the circumstances.**

Commentary:

- A. A representative should document client interactions in order to create a record of what transpired between a representative and a client so that another representative could, if need be, resume representation should the initial representative be unavailable.
- B. While the level of recorded detail may vary, the following types of information should be minimally captured:
  - a. Dates of interactions;
  - b. Topics addressed or covered during each interaction;
  - c. Outcome of each interaction, particularly if next steps or deadlines have been set; and
  - d. Format (in-person, phone, text, etc.) or venue of the interaction.
- C. A non-exhaustive list of interactions made on behalf of a client that should be documented in as much detail as possible are:
  - a. Communications between a representative and an agency official, written or spoken;
  - b. Preparation of work product (e.g., USCIS/EOIR forms, cover letters, memoranda of law, motions, etc.) made in furtherance of a client’s case;
  - c. Receipt of correspondence from an agency and the substance of the correspondence; and
  - d. Complete and final copies of all documents or materials filed with an agency on the client’s behalf.

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<sup>12</sup> See Formal Opinion 500 of the American Bar Association’s Standing Committee on Ethics and Professional Responsibility relating to “Language Access in the Client-Lawyer Relationship,” (October 6, 2021), available at [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba-formal-opinion-500.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-500.pdf).

## SPECIAL CONSIDERATIONS

### Minor Clients

**A representative should interact with minor clients in an age and developmentally- appropriate manner.**

#### Commentary:

- A. For a thorough exploration of this topic as it relates to immigration practice, a representative should familiarize themselves with the details of the American Bar Association Commission on Immigration's *Standards For the Custody, Placement And Care; Legal Representation; and Adjudication Of Unaccompanied Alien Children In The United States*<sup>13</sup>, Appendix To Rules Iv.C and V.C: Additional Training In Child-Sensitive And Culturally Appropriate Interviewing Techniques, which addresses preparation for an interview with a child, as well as guidelines for the interview itself.

### Clients with Disabilities and/or Diminished Capacity

**If a representative suspects that a client may have a disability that could impact their ability to comprehend the nature and scope of their legal matter and make adequately considered decisions relating thereto, all attempts should be made to secure a formal diagnosis or liaise with the client's mental health provider and to develop a responsive representation plan.**

#### Commentary:

- A. A legal representative is not expected to have an in-depth understanding of psychology, psychiatry, or neurology, but should be aware of whether a client is able to understand the nature of their immigration proceedings or is unable to meaningfully participate in their immigration proceedings. This can be assessed over the course of regular client meetings, or ascertained, for example, through frequent check-ins, where a client is asked to repeat back in their own words a representative's explanation of some aspect of those proceedings.
- B. Should a representative have concerns about their client's understanding of their immigration proceedings and ability to make decisions, a referral should be made to a mental health or medical professional.
- C. Depending on the circumstances, a responsive representation plan for a client with disabilities or diminished capacity might include:
  - a. Identification of a guardian or other legal proxy;

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<sup>13</sup> Available at [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/standards\\_for\\_children\\_2018.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/standards_for_children_2018.pdf).

- b. Modification of the methods by which the client relates facts or information relevant to their case; for instance, conducting shorter interview meetings or coordinating with a legal guardian or caseworker prior to client meetings to ensure the client is prepared for the matters to be discussed;
- c. Advocacy with the appropriate tribunal for safeguards tailored to the client's individual needs, such as:
  - i. For clients appearing before USCIS for a naturalization interview, seeking a medical disability exception or a disability accommodation;
  - ii. For clients in Immigration Court proceedings, requesting a competency determination and the application of safeguards pursuant to *Matter of M-A-M*, 25 I&N Dec. 474 (BIA 2011) and exploring all available statutory and regulatory procedural safeguards.

## COMPETENCE<sup>14</sup>

**Representatives in immigration practice should have the requisite knowledge and skill for the particular immigration matter. Provided the representative engages in diligent study and skill acquisition for the matter, however, it is not necessarily required to have special training or prior experience in an immigration matter.**

### Commentary:

- A. Immigration practice is complex and multi-faceted. As such, many representatives focus their practice on particular areas or sub-specialties (e.g., removal defense, asylum, humanitarian relief, etc.) and become expert in them to the exclusion of others. It is, thus, reasonable that a representative might handle an immigration matter in which they lack experience and engage in the needed study and skill acquisition for that matter. Such acquisition might include mentorship from a skilled representative, consulting known experts, studying written resources, attending a training by a recognized leader in immigration law pedagogy,<sup>15</sup> or a combination of the all.
- B. Requisite knowledge and skill in immigration practice encompasses not only understanding the relevant statutory, regulatory, and jurisprudential predicates, but also the policies and procedures of practice before a given tribunal or agency. For example, a representative who fails to adhere to the rules of the Immigration Court Practice Manual<sup>16</sup> by filing a motion outside of the requisite time period prior to a hearing would be regarded as lacking

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<sup>14</sup> For a more in depth discussion of issues relating to competence in immigration representation, see AILA Ethics Compendium: Modern Legal Ethics for Immigration Lawyers, pg. 9-46, AILA Doc. No. 13100890.

<sup>15</sup> Some notable examples include the American Immigration Lawyers Association (AILA), the Catholic Legal Immigration Network (CLINIC), and the Immigrant Advocates Network (IAN).

<sup>16</sup> See Executive Office for Immigration Review, Immigration Court Practice Manual, available at <https://www.justice.gov/eoir/reference-materials/ic>.

competence. In the affirmative representation context, neglecting to file or appropriately complete a required form with USCIS, might also indicate a lack of competence.

**Competent handling of an immigration matter includes making adequate inquiry and analysis of the factual and legal elements of the client’s problem.**

Commentary:

- A. A thorough investigation of all facts and factual sources relevant to a client’s immigration matters should be conducted by the representative. Actions relating to the investigation of facts pertinent to a client’s immigration matters might include:
  - a. Conducting a thorough intake (see above) and follow-up client interviews as needed to elicit all pertinent facts;
  - b. Securing of documents to ascertain a client’s historical or present-day interactions with agencies or officials with authority to impact the client’s immigration status or the relief being pursued. Where there is any doubt about the client’s ability to furnish all necessary documents relating to their prior interactions with a Federal immigration agency, or any other entity that the client may have interacted with, where such interaction would tend to impact their status or immigration relief options, a representative should seek to secure those documents through a records request; and
  - c. Securing evidentiary support for the relief or defenses to deportation being pursued. Marshaling of evidence should involve a creative and exhaustive search that leverages the energies and resources of both the representative and client.
- B. Robust and thorough research of a client’s legal bases for relief eligibility, defenses to deportation and attendant issues surrounding a client’s Immigration Court proceedings should be conducted and documented as necessary at every stage of representation. A representative should have ready access to legal research tools that allow for the ability to ascertain the subsequent treatment of case law and statutory law, in addition to frequently relied upon immigration-specific resources, such as Kurzban’s Immigration Law Sourcebook.<sup>17</sup>
  - a. A representative should additionally consult agency-adopted procedural manuals and related materials, as needed, prior to submitting a document or filing. For affirmative immigration matters, such materials include the USCIS Policy Manual,<sup>18</sup> the Administrative Appeals Office Practice Manual,<sup>19</sup> and all USCIS form instructions,<sup>20</sup>

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<sup>17</sup> See <https://agora.aila.org/store/products/view/kurzban-immigration-law-sourcebook>.

<sup>18</sup> See <https://www.uscis.gov/policy-manual>. As noted on the USCIS Policy Manual webpage, the Manual has replaced the USCIS Adjudicator’s Field Manual, some provisions of which remain extant due to their absence in the Policy Manual.

<sup>19</sup> See <https://www.uscis.gov/administrative-appeals/aao-practice-manual>.

<sup>20</sup> See <https://www.uscis.gov/forms/all-forms>.

which have the force of law.<sup>21</sup> In defensive immigration representation, a representative should follow the aforementioned Immigration Court Practice Manual<sup>22</sup> and the Board of Immigration Appeals Practice Manual.<sup>23</sup>

**Expertise in a particular field of immigration law may be required in some circumstances.**

Commentary:

- A. Time is frequently of the essence in immigration representation. In those instances, a representative may not have the opportunity to become competent in a particular field of immigration law because to do so would jeopardize or damage the client’s legal interests or rights. For instance, where a predicate order must be obtained for a Special Immigrant Juvenile Status client who will imminently age out of eligibility and a representative has no knowledge or experience of state court practice. Where a representative is unable to obtain the necessary expertise to address a client’s legal needs, they should seek to refer the client to a representative who has the relevant expertise and will be capable of providing the service the client needs.

## WITHDRAWAL OF REPRESENTATION

**A representative must abide by their ethical duties and withdraw from representation only where permissible to do so; further, if a notice of appearance has been filed with an immigration agency, a representative should abide by the rules and regulations established by those agencies for withdrawal as counsel of record. When participating in a universal representation program, a representative should withdraw only when ethically required to do so.**

Commentary:

- A. Ethical withdrawal of representation

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<sup>21</sup> See 8 C.F.R. § 103.2(a)(1) (Submission and adjudication of benefit requests; Filing; Preparation and Submission), which states: “Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions regardless of a provision of 8 C.F.R. chapter I to the contrary. The form's instructions are hereby incorporated into the regulations requiring its submission.”

<sup>22</sup> See Executive Office for Immigration Review, Immigration Court Practice Manual, available at <https://www.justice.gov/eoir/reference-materials/ic>.

<sup>23</sup> See Board of Immigration Appeals Practice Manual, available at <https://www.justice.gov/eoir/reference-materials/bia>.



- a. A representative should seek to understand and comply with their ethical duties to a client surrounding mandatory and permissive withdrawal of representation.<sup>24</sup>
  - b. Two frequent issues in withdrawal of representation are particularly notable for immigration representatives. First, if a representative determines that they must withdraw from representation, they should do so as soon as possible after the initiation of representation. This is of greatest significance to clients in Immigration Court proceedings, given the liberty interests at stake in those matters. Second, in immigration practice the interests of multiple parties are often at issue (most especially in a dual representation scenario) and therefore the potential for an unwaivable conflict requiring withdrawal is higher than usual. When encountering a potential conflict between clients, a representative should conduct a thorough analysis of applicable ethical norms to determine whether withdrawal is indeed required under the circumstances presented.
- B. Withdrawal as counsel of record after notice of representation has been entered
- a. Withdrawal of an appearance before the Executive Office for Immigration Review (EOIR)
    - i. After a notice to appear has been entered before EOIR, a representative should take heed of 8 CFR § 1003.102, addressing “Professional Conduct for Practitioners” appearing before EOIR, which states that “[a] practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations.”
    - ii. Further, the Immigration Court Practice Manual requires a representative to motion the court orally or in writing to withdraw.<sup>25</sup> The Immigration Court Practice Manual further elucidates the contents of a motion to withdraw, which include a statement of “the reason(s) for the withdrawal of counsel, in conformance with the applicable state bar or other ethical rules.”
  - b. Withdrawal of an appearance before the United State Citizenship and Immigration Service (USCIS)
    - i. After a notice to appear has been entered before USCIS, a representative should take notice of 8 CFR § 292.4, covering appearances before the Department of Homeland Security: “[s]ubstitution may be permitted upon the written withdrawal of the attorney or accredited representative of record or upon the filing of a new form by a new attorney or accredited representative.”
    - ii. USCIS guidance provides no additional details regarding withdrawal of an appearance; however, a best practice is to send the agency a letter providing them notice of the withdrawal to ensure that future correspondence is not shared with the representative.

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<sup>24</sup> For a thorough primer on withdrawal of representation in immigration practice, see Mehta, Cyrus D., *Withdrawal of Representation in Immigration Practice*, American Immigration Lawyers Association, AILA Doc. No. 12112043, 2018. See also Oregon Rules of Professional Conduct, Rule 1.16, Declining Or Terminating Representation.

<sup>25</sup> See Executive Office for Immigration Review, *Immigration Court Practice Manual*, chapter 2, pg. 20.

- C. Withdrawal in the context of a universal representation program
  - a. A universal representation program functions on the assumption that each client will receive the most robust and thorough representation possible, without regard to the outcome achieved. Further, it is a closed loop system, whereby any matter that is returned to the pool of unrepresented respondents must be taken up by another representative. Thus, permissive withdrawal, particularly where the motive is a representative's inability to determine a relief option for the client, defies the purpose of the program, taxes the system, and often disadvantages the client as they await referral to a new representative.

## AFFIRMATIVE IMMIGRATION REPRESENTATION

**From the filing of an application or petition for an affirmative benefit through its adjudication, a representative should seek to comprehensively and persuasively meet their evidentiary burden, while advocating assertively for the prompt and favorable adjudication of the client's filings.**

### Commentary:

- A. In affirmative matters, the burden of proving eligibility for the requested benefit lies with the applicant (or petitioner),<sup>26</sup> who must show by a preponderance of evidence that they qualify.<sup>27</sup> A representative should therefore marshal the necessary evidence to meet that burden, while protecting their client from agency overreach that seeks to push beyond that threshold.
- B. To meet this standard a representative should consider the following best practices:
  - a. In every correspondence sent to an adjudicating agency, including a cover letter which details, at a minimum, the matter being referenced (e.g., form title and, if appropriate, the assigned agency tracking number), the client's full legal name, and an enumerated list of the documents attached therein. In certain complex matters, a cover letter should include a statement of facts and a statement of law;
  - b. Responding rapidly and exhaustively to requests for evidence, notices of intent to deny, and notices of intent to revoke; and
  - c. Monitoring case progress against stated agency processing times and advocating for case review through relevant agency channels where a matter is outside of the stated processing time. In circumstances where delays are extreme and particularly harmful to the client, a representative should consider litigation options and other forms of advocacy.

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<sup>26</sup> See 8 U.S.C. § 1361.

<sup>27</sup> See USCIS Policy Manual, Chapter 4, Burdens and Standards of Proof, available at <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-4>.

**When attending a client’s affirmative benefits interview, a representative should be present to furnish additional evidence of eligibility for the requested benefit, to support their client, to record the details of the proceeding, to intervene where a USCIS officer acts improperly or misinterprets the law, or to correct or explain the record.**

Commentary:

- A. A representative has a right to attend a client’s benefits interview and represent their interests in that venue.<sup>28</sup> Doing so has the potential to allay client anxieties and can be a key avenue for advocating on the client’s behalf. Further it is an opportunity for a representative to liaise with agency officials and attain familiarity with agency processes not otherwise visible to the public.
- B. A non-exhaustive list of best practices in attending an affirmative benefits interview are:
  - a. Prepare the client ahead of time with a mock interview;
  - b. Where necessary, correct the record and assert legal arguments in support of the client’s case;
  - c. If applicable, provide additional evidence, that has become available since the time of filing;
  - d. Advocate for the client’s rights – for example, the right to translation or, in the naturalization context, an exemption of the English language requirement;
  - e. Record the details of the interview, including the officer’s name, the questions asked, and the responses furnished by the client; and
  - f. Should an agency official act improperly towards a client, escalate the matter through the appropriate supervisory channels.

## DEFENSIVE IMMIGRATION REPRESENTATION

**At the pleadings stage of an Immigration Court proceeding, a representative should adequately address the Department of Homeland Security’s Notice to Appear, both its contents and manner of service, so as to ensure maximum procedural and substantive due process for their client.**

Commentary:

- A. Thoroughly addressing the Department of Homeland Security’s Notice to Appear (NTA), the document which gives notice and initiates Immigration Court proceedings against a respondent,<sup>29</sup> is a pivotal opportunity for advocacy on a client’s behalf that should not be overlooked. The way one chooses to address this stage of the proceedings may differ depending

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<sup>28</sup> See 8 C.F.R. § 292.5(b), which states: “Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs.”

<sup>29</sup> See 8 C.F.R. § 1003.14; and 8 U.S.C. § 1229.

on the client's wishes, the representative's individual advocacy style, and the practices of the court where the matter is venued. These are nuanced considerations best made on a case-by-case basis. What follows is a list of the tools available to a representative when asserting a client's procedural and substantive due process rights at this stage.

- B. A representative should first and foremost be familiar with the burdens of proof at issue in their client's case, which will differ depending on the client's legal status upon entry into the United States, amongst other factors.<sup>30</sup> From there, a representative should examine whether the NTA is procedurally proper, whether it is legally and factually accurate, and whether the evidence in support of it is reliable. Representatives are encouraged to delve deep into this sub-area of practice, for example by reviewing helpful primers and practice advisories.<sup>31</sup>
- C. A non-exhaustive list of actions a representative should take in this regard are:
  - a. Thoroughly review the NTA with the client to ensure the facts contained are accurate, noting any discrepancies that arise;
  - b. Based upon review of the NTA with the client, assessment of any other documents in the client's possession relating to their entry into the U.S., and other pertinent info, assess and diagnose potential grounds for challenging the NTA; and
  - c. Discuss the ramifications of challenging the NTA with the client and agree upon a plan of action. For instance, if a challenge to the NTA could result in the termination of Immigration Court proceedings, ensure the client understands that certain forms of relief (e.g., Cancellation of removal for Non-Permanent Residents under INA § 240A(b)(1)) may be temporarily foreclosed to them.

**Throughout the pendency of Immigration Court proceedings a representative should actively safeguard their client's interests, take all chances to litigate towards their client's preferred outcome, and preserve all potential issues for appeal.**

Commentary:

- A. As of this writing, the average pendency of cases filed with the Portland Immigration Court is upwards of two years.<sup>32</sup> Many matters will remain before the Court for far longer. Within that vast span of time, many opportunities to advocate for a client's interests will present themselves. A representative should seek to capitalize on as many as feasible.
- B. Early screening and pursuit of all viable avenues for relief from deportation
  - a. Due to Immigration Court backlogs and EOIR calendaring practices, a majority of clients will appear before an Immigration Judge for their final Individual Calendar Hearing

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<sup>30</sup> See 8 § C.F.R. 1240.8.

<sup>31</sup> See, e.g., American Immigration Council, Notices to Appear: Legal Challenges and Strategies, 2019, available at [https://www.americanimmigrationcouncil.org/practice\\_advisory/notices-appear](https://www.americanimmigrationcouncil.org/practice_advisory/notices-appear).

<sup>32</sup> See TRAC Reports, Immigration Court Backlog Tool, available at [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/) (last visited February, 4, 2023).

(ICH)<sup>33</sup> long after their initial Master Calendar Hearing (MCH),<sup>34</sup> the latter being where applications for relief are generally put on the record. It is thus of paramount importance for a representative to ascertain, and submit to the Immigration Court, the client's relief options as early as possible in the course of the proceedings. Doing so will offer clarity to the client and allow for strategic decision-making at every turn. As but one example, in representing a Special Immigrant Juvenile Status-eligible client, a representative must be attuned to an array of issues (e.g., the client aging out, criminal bars, and coordination of State Court representation for representatives not locally admitted to practice) that, if addressed early, will forestall delays and protect the client's interest in a favorable and speedy outcome.

- b. Similarly, a representative should seek to pursue all viable avenues for relief. Failing to do so may severely prejudice the client, who will likely be foreclosed from raising novel defenses to deportation after the conclusion of their proceedings.
- C. The following are best practices in shepherding a client's interests throughout Immigration Court proceedings:
  - a. Prior to each appearance before the Immigration Court, a representative should liaise with their client to coordinate logistics, to clarify what the representative expects to occur, and what the client's role will be during the appearance. A representative should conduct a conversation with their client after the appearance to ensure the client's understanding of what transpired and the appearance's relevance to the larger course of representation, and to discuss any next steps;
  - b. After entering their notice of appearance, a representative should attend all scheduled appearances. Further, a representative should work to ensure their client attends all Immigration Court appearances and should otherwise avoid the entering of an *in absentia* order;
  - c. When pursuing a request for prosecutorial discretion,<sup>35</sup> a representative should ensure their client understands the potential ramifications, particularly where the request may result in the termination of the client's application for relief from the Immigration Court's docket;
  - d. A representative should attempt to confer with Immigration and Customs Enforcement's Office of the Principal Legal Advisor to advocate for the filing of joint

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<sup>33</sup> The Immigration Court Practice Manual defines Individual Calendar Hearings as "evidentiary hearings on contested matters...[including] challenges to removability and applications for relief." Colloquially ICHs are often referred to as 'merits hearings.' See Immigration Court Practice Manual at ch. 4, pg. 78.

<sup>34</sup> The Immigration Court Practice Manual states that Master Calendar Hearings are "are held for pleadings, scheduling, and other similar matters." See Immigration Court Practice Manual at ch. 4, pg. 69.

<sup>35</sup> Immigration and Customs Enforcement's Office of the Principal Legal Advisor describes prosecutorial discretion as a tool for their "attorneys to decide on which cases to focus their finite resources and how to proceed in individual cases in light of the facts and applicable law, including, for example, agreeing to dismissal or administrative closure or entering into stipulations on legal or factual issues as well as relief, bond, and continuances." See <https://www.ice.gov/about-ice/opla/prosecutorial-discretion> (last visited February 4, 2023).

- motions, and, prior to a merits hearing, to request joint stipulation to relief or facts or the narrowing of legal issues;
- e. Before and during a merits hearing, a representative should leverage all tools at their disposal to advocate for a positive outcome, including their filings with the court (i.e., motions, briefings, submitted evidence and, if applicable, a prehearing statement); testimony from their client, witnesses, and experts; oral arguments; and asserting objections where appropriate;
- D. Preserving all potential issues for appeal
- a. A representative should preserve their client’s right to appeal by raising all issues of fact and law and ensuring they are part of the record of proceedings; objecting to Immigration Judge decisions (interlocutory and final) that are adverse to their client’s interests; and preserving the client’s right to appeal at the conclusion of the ICH.

## POST-ADJUDICATION

**After the favorable adjudication of a client’s immigration matter, a representative should counsel their client on the limitations and contours of their new immigration status or any subsequent steps needed to advance their immigration matter towards completion.**

### Commentary:

- A. All immigration statuses carry legal and practical responsibilities that bear explanation to those to whom they have been granted. A representative should thoroughly counsel their client on how their immigration status may impact their decisions moving forward.
- B. Following a favorable benefits adjudication (defensive or affirmative), a representative should counsel their client on the rights, responsibilities, limitations, and risks of the client’s newly acquired immigration status. The following are best practices in this regard:
  - a. A client should be informed how their status may allow or inhibit their travel outside of the United States and, if international is not permitted, what issues may result from a client choosing to do so without permission;
  - b. If a client has been granted a temporary status that allows for renewal or a subsequent change of status (e.g., asylum to Lawful Permanent Residence status, or conditional permanent residence to removal of conditions), a representative should counsel their client on when the renewal or change of status process can be initiated, who the client can contact to assist in that effort, and the impacts, if any, of failing to initiate that renewal or change of status;
  - c. Where a representative has successfully advocated for a client’s case to be terminated from the Immigration Court’s docket, thus permitting the client to seek relief affirmatively from USCIS, a representative should advise the client when and how to do so, unless the representative will continue to represent the client;
  - d. A client should be informed about the potential impact to their immigration status should they be arrested, charged, or convicted of a crime; and

- e. A client should be advised regarding how, if at all, the client's family members are able to derive status from them.
- C. A representative should prepare and mail or hand-deliver to the client a detailed closing letter containing all appropriate advisals, and instructions for the client on how long their file copy will be maintained and how to request a copy of their file, should they so desire.

**Whether or not a representative has been retained by a client for representation in their appellate matter, a representative should counsel their client on their appeal options and, where possible, seek to refer them for representation in those matters.**

Commentary:

- A. In the unfortunate scenario where a client's case is unfavorably adjudicated, a representative should thoroughly advise their client on the reason(s) for the denial, and, if the matter is appealable, any pertinent filing requirements, deadlines, and the general scope of appealable issues.
- B. Ideally, a representative will have a ready referral to offer their client. If not, in circumstances where few resources are available for appellate representation and a client must tender their appeal in a short span of time, a representative should consider assisting their client with a *pro se* notice of appeal filing.

## IV. OBLIGATIONS OF IMMIGRATION LEGAL SERVICES ORGANIZATIONS TO CLIENTS AND STAFF

The following sections highlight relevant portions of the American Bar Association’s Standards for the Provision of Civil Legal Aid<sup>36</sup>, a recognized authority on the provision of civil legal aid services and a binding element of the Legal Service Program (LSP) Standards and Guidelines, while addressing their application in immigration practice through the provided commentary.

### MANAGERIAL STANDARDS

#### SUPERVISION

**Standard 6.4 of ABA Legal Aid Standards: In addition to a practitioner’s ethical duties relating the representation, a legal aid organization also is responsible for the representation and assistance undertaken by its practitioners and should supervise the work to ensure that each client receives high-quality representation or assistance. Supervision can be done in-person, remotely, or using a combination of the two.**

#### Commentary:

- A. Supervision that ensures “high quality representation and assistance” should be focused on the outcome of client service, while also catering to the needs of supervisors, managers, and those being supervised. Focusing supervision on those providing assistance as well as those receiving it fosters a person-centered, emotionally intelligent, high-functioning organizational culture, which can result in greater staff retention. This benefits clients, who receive greater quality and continuity of representation from skilled, well-resourced, and knowledge advocates. For immigration-focused organizations, where staff retention is often stymied by large caseloads, lower-than-average salaries, and casework-induced psychological distress,<sup>37</sup> the following supervisory best practices are highly encouraged:

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<sup>36</sup> See American Bar Association’s Standards for the Provision of Civil Legal Aid, available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/).

<sup>37</sup> See, e.g., Harris, Lindsay M and Mellinger, Hillary, *Asylum Attorney Burnout and Secondary Trauma*, 56 Wake Forest Law Review 733 (2021), available at <https://ssrn.com/abstract=3787163>; Brown, Marcia, *The Loneliness of the Immigration Lawyer*, The American Prospect, October 20, 2020, available at <https://prospect.org/justice/loneliness-of-the-immigration-lawyer/>.



- a. The scope of the supervisor-supervisee relationship should include oversight, accountability, and support for ongoing growth.<sup>38</sup> Support of a representative's growth as a professional will necessarily be tailored to an individual's goals; however, some hallmarks of that relationship are:
  - i. Mentorship through role-modeling, active investment in the development of a representative's abilities, care for the representative's well-being and health, and assistance in creating professional goals and related milestones;
  - ii. Regular, structured check-in meetings between a supervisor and supervisee that address technical guidance on casework and related legal and tactical questions, management and balancing of a supervisee's caseload, and quality-of-life supports. Check-in meetings should occur as often as weekly at a predetermined time, with less frequent (e.g., monthly) meetings held to review a supervisee's complete workload, including deadlines, challenges, and progress towards milestones; and
  - iii. Regular performance reviews, facilitated in a manner that ties a supervisee's goals to team/department goals, and provides an opportunity for the manager to be assessed by the supervisee. A related tool is the work plan, which often includes the scope of an employee's responsibilities, as well as their stated goals.
- B. To ensure high-quality person-to-person supervision, an organization should invest in regular training and professional development for managers and supervisors. Further, standards for supervision should be created, shared with all staff, and utilized in conducting supervisor performance reviews;
- C. Supervision includes not only the interaction between supervisors and staff, but also the sharing of resources to support staff in their everyday work. In immigration practice, which is highly fact-driven and procedurally intensive, the development of such resources can offer a safety net for new and seasoned practitioners, while ensuring that institutional knowledge builds over time. An organization should, in this regard, create written materials that lay out procedures for intake, conflict checks, confidentiality, case acceptance, case opening, case management, and case closing, among other matters. Where possible, materials should include or reference the location of template retainers, cover letters, briefs, and other practice management tools (e.g., client-facing informational materials, and task and relief-specific checklists).

## REVIEW OF REPRESENTATION

**Standard 6.5 of ABA Legal Aid Standards: Consistent with practitioners' duties relating to confidentiality of client information relating to the representation, a legal aid organization should review the assistance and representation provided to clients to ensure that they receive high-quality assistance and to identify areas in which the organization should offer training and support to its**

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<sup>38</sup> Oversight and accountability are discussed in greater detail in the sections that follow.

**practitioners. Utilizing a robust case management system can make supervision through case review more efficient and effective.**

Commentary:

- A. Systematic, thorough review of the representation being provided in an immigration practice is necessary<sup>39</sup> given the significant liberty interests at stake in virtually every client engagement and the complexity of the subject matter. An organization should therefore establish and implement policies for the review of all client representation, without regard to the perceived level of difficulty of any particular matter.<sup>40</sup>
- B. Efforts to review the representation of an organization’s staff should include some or all of the following initiatives:
  - a. Regular case review meetings that provide for a full audit of a representative’s caseload, including a review of deadlines, updates, and addressing potential and actual issues of concern. Case audits should prompt supervisory review of a representative’s case notes, data entry, and casefiles. The frequency and intensity of case review meetings should vary based on the complexity of a representative’s caseload and the representative’s relative experience level;
  - b. Case round meetings where staff are able to surface case-related concerns and provide feedback to one another;
  - c. Shadowing of a representative’s client interactions and appearances before adjudicating agencies by a supervisor. Based upon first-hand observation of a representative’s work, a supervisor should offer feedback, guidance, and other relevant professional development opportunities; and
  - d. “Frequent case management reports to supervisors on the status of the practitioner’s open cases, in sufficient detail to signal a need for further inquiry in the event that a case is not proceeding properly.”<sup>41</sup>
- C. A note is due regarding the tracking and review of a representative case-related time expenditures. While time logging can require significant administrative effort, it has the potential to serve as a powerful tool in the oversight and assessment of an individual representative’s casework and an organization’s overall effectiveness.

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<sup>39</sup> In addition to the practical benefits of review of representation discussed here, there are applicable ethical exigencies as well. See *e.g.*, ABA Model Rules of Professional Conduct, Rule 5.1, Responsibilities of a Partner or Supervisory Lawyer.

<sup>40</sup> For instance, representation related to an application for an employment authorization document merits supervisory review, much in the same manner that representation in a multi-faceted Board of Immigration Appeals briefing might, albeit to varying degrees of intensity.

<sup>41</sup> American Bar Association’s Standards for the Provision of Civil Legal Aid, Standard 5.5, pg. 213.

## TRAINING AND PROFESSIONAL DEVELOPMENT

**Standard 6.6 of ABA Legal Aid Standards: A legal aid organization should provide access to ongoing and comprehensive training for all personnel. Training topics should include, at a minimum, substantive legal topics; ethics, legal representation, and trial skills; and training to ensure competence in current technology used in providing legal services.**

### Commentary:

- A. Training and professional development are essential building blocks for any immigration representative, regardless of level of experience.
- B. Representatives<sup>42</sup> should be minimally trained on the following topics,<sup>43</sup> depending on the nature of individual caseloads and interest areas:
  - a. Trauma-informed culturally competent client interviewing and counseling, including discussion of intake and triage best practices;
  - b. Overview of immigration law, policy and practice, including historical and extant avenues for relief;
  - c. Immigration court trial advocacy;
  - d. Affirmative immigration advocacy before the Department of Homeland Security and the Department of State;
  - e. State-specific immigration consequences of criminal encounters;
  - f. Bars to inadmissibility and removability, alongside relevant waivers thereof, contained in INA 212 and 237, respectively;
  - g. Forms of relief in Immigration Court proceedings;
  - h. Affirmative immigration benefits<sup>44</sup>, including coverage of employment-based forms of relief;
  - i. Immigration and jurisdiction-specific ethics; and
  - j. Legal writing, for attorneys and non-attorneys.
- C. Training options should be offered at varying frequency and in a variety of formats, including in-person and virtual, lecture and practicum-based, to cater to different schedules, learning styles, and needs.
- D. Where possible, an organization should maintain a dedicated professional development fund, providing a set amount of training allowance to each programmatic staff person.

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<sup>42</sup> Support staff should be afforded access to training and professional development. This is particularly valuable to an immigration practice, where support staff often form the ranks of DOJ Accredited Representative programs and eligibility to become an Accredited Representative requires a showing of training attendance. See 8 C.F.R. § 1292.12.

<sup>43</sup> Trainings should address black letter law and policy in addition to practical skill building and knowledge acquisition.

<sup>44</sup> This is a particularly expansive topic that is best distributed over several trainings, subdivided by focus areas, such as family-based immigration, humanitarian relief options, etc.

## OPERATIONAL STANDARDS

### ESTABLISHING A CLEAR UNDERSTANDING WITH CLIENTS

**Standard 5.3 of ABA Legal Aid Standards: A legal aid organization should establish a clear, mutual, and timely understanding with persons seeking its services regarding the assistance, if any, it will provide.**

Commentary:

- A. The above-referenced standard of the American Bar Association’s Standards for the Provision of Civil Legal Aid unpacks this concept further into several pillars, discussed below with regard to their relevance in immigration practice:
- a. Identifying the client
    - i. It is a frequent practice for an immigration legal services organization to be retained by multiple clients for the same matter (e.g., marriage-based adjustment of status, where a petitioning partner and the individual applying for Lawful Permanent Residence are represented concurrently). In those instances, a dual representation retainer agreement containing organizational policies around conflicts of interest and other related issues should be used and explained thoroughly to the clients.
  - b. Identifying the legal problem
    - i. Where multiple forms of relief are being pursued concurrently, all should be referenced in the retainer agreement or receive their own separate retainer.
  - c. Identifying any limitation to the scope of representation
    - i. Immigration practice offers numerous opportunities to for limited scope representation. This has traditionally been the case more so in affirmative representation, where, for example, application preparation clinics related to naturalization and Deferred Action for Childhood Arrivals are common. EOIR regulations also provide explicitly for limited representation on applications and motions in Immigration Court proceedings.<sup>45</sup> Limited scope representation is encouraged, insofar as it complies with applicable ethical rules,<sup>46</sup> as a means of scaling representation and providing tailored legal service options.

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<sup>45</sup> See 8 C.F.R. §§ 1003.17(b) (“A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court.”)

<sup>46</sup> See, e.g., Oregon Rules of Professional Conduct, Rule 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer (“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”).

- ii. With that said, a limited scope representation should be explained to the client in detail and reduced to writing. A representative should comply with agency-defined guidance and requirements for limited-scope representation.<sup>47</sup>
- d. Retainers and other written agreements
  - i. As noted above (see Initial Client Interactions), a retainer agreement should contain the terms and scope of the representation to be undertaken. A copy of the signed retainer should be provided to the client, with another copy stored in the client file. If the scope of representation should change, so too should the retainer agreement.
- e. Clients' rights and responsibilities
  - i. As noted in the ABA Standards' explanation, the rights and responsibilities of the client (often embedded in a retainer agreement) should convey:
    - "that the organization will protect the confidentiality of the information the client provides consistent with its practitioner's ethical obligations
    - Both client and organization should understand the client's right to be kept informed of the progress of the matter and to participate in key decisions regarding its conduct.
    - Clients should be encouraged to initiate contacts with the practitioner and should receive direction from the organization on how to do so.
    - Clients should recognize the importance of keeping the practitioner informed of changes in circumstances affecting the case and advising the organization of their whereabouts so that they can be contacted when necessary.
    - Clients should understand their responsibility to assist in preparing the case by locating witnesses, documents, or physical evidence, by cooperating with discovery requests, and by keeping appropriate records, when necessary.
    - The practitioner should explain to clients what they should do in the event of dissatisfaction with the handling of their legal problems.
    - If the organization is required under federal law or grant terms to provide information to auditors or those funders, client should be informed of what information may be shared and how and that client's informed consent will be requested.
    - Practitioners or staff should inform the client of any client grievance procedure in relation to the various grievance options, if any, that may be available and ensure that the client understands the process and implications, including those related to the giving of confidential information in the context of the grievance proceeding."

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<sup>47</sup> See 8 C.F.R. §§ 1003.17(b) (excerpted above), which requires a practitioner to submit Form EOIR-60 alongside any document prepared for the client. In the case of USCIS, all forms contain a preparer field, which should be completed by the representative.

## CASELOADS

**Standard 6.3 of ABA Legal Aid Standards: A legal aid organization should assign and manage cases and individual workloads for practitioners and other staff to promote competent, high-quality representation and legal work.**

Commentary:

- A. As noted in the discussions above regarding competence and supervision, unwieldy caseloads may quickly become ethical concerns for individual immigration representatives and the organizations that employ them. As such, every organization should have established policies regarding how work is assigned. The ABA Standard suggests the consideration of the following factors in developing such policies:
- a. The availability of adequate time to represent the client completely
    - i. In the realm of immigration practice, adequate time should be defined to include not only direct client advocacy (i.e. client meetings, case management, preparation for and appearance at hearings/interviews, and preparation of filings and applications) but also the significant periods of dormancy in many immigration matters. Insofar as possible, organizations should utilize available third-party and internal data to determine the cycles of representation in any given case type and how staff resources should be allocated within it.
  - b. The practitioner's level of experience, training, and expertise
    - i. As noted already, immigration law is complex, expansive, but generally learnable. An organization should ensure that a representative is provided with the necessary support, guidance, and training to undertake work that is outside of their familiarity. Further in determining an appropriate caseload for an inexperienced representative, case types that are new to them should be weighted more heavily than others.
  - c. The status and complexity of pending cases
    - i. The importance of scoping all representation at the outset should help in determining the complexity of cases. However, in immigration practice, there are often complexities introduced in the course of representation, including the arising of unknown or new criminal issues, detention of a client, changes in law or policy, and many others. An organization should create policies which allow for re-balancing of a representative's caseload when such complexities arise.
  - d. Non-representational legal work and other responsibilities
    - i. In addition to direct client assistance, many organizations conduct community outreach and education. These are time-intensive efforts that should be factored into a representative's caseload.
    - ii. Similarly, managers and supervisors often carry a docket of cases, in addition to their management duties. Maintaining a foothold in the practice of immigration law is of value, as it helps supervisors relate to their supervisees and retain familiarity with the intricacies of practice. However, an organization should have guidelines as to the number of cases a supervisor or manager is able to carry at any given time in relation to their management duties.

- e. The organization's capacity for support
  - i. Amongst many other useful material supports to immigration practitioners, substantive law specialists and ancillary staff bear particular mentioning. For instance, an expert on the immigration consequences of criminal convictions can provide strategic insight and guidance in a wide cross-section of matters that organizational staff might encounter. Similarly, an in-house social worker can save representative's significant energy and time by conducting client mental health interventions, making referrals to ancillary services, and serving as an expert or affiant in many immigration matters.

## CLIENT FILE MAINTENANCE AND RETENTION

**Standard 5.5 of ABA Legal Aid Standards: A legal aid organization should establish and maintain an electronic file in its case management system or a hard-copy file for each of its cases, which records all material facts and transactions, provides a detailed chronological record of work done, and sets forth a planned course of action. In addition, an organization should have policies regarding retention of client files and information, as well as policies that are consistent with ethical and legal responsibilities regarding whether and how client information may be shared with external entities with clients' informed consent.**

### Commentary:

- A. For immigration matters, a casefile should contain at a minimum:
  - a. Copies of all correspondence and filings submitted on behalf of a client to agencies and tribunals;
  - b. Copies of all correspondence received on behalf of a client;
  - c. An original copy of the signed retainer agreement;
  - d. Notes describing interactions with and on behalf of a client;
  - e. Copies of documentary evidence collected from the client, including the client's identity documents;
  - f. Key client information, including name, contact information, preferred gender pronouns; and
  - g. A description of any client or case-related background.
- B. A copy of a client's file should be made available to them upon request and furnished within a reasonable timeframe.

## ACCESS TO SERVICES

### LANGUAGE JUSTICE

**Standard 5.7 of ABA Legal Aid Standards: A legal aid organization should ensure that all language communities receive systematic and fair treatment and respect for their fundamental language rights: The human and civil rights of linguistic groups, such as the right to preserve nondominant languages, to access critical services without language barriers, and to live free from linguistic discrimination in education, workplaces, civic participation, and all other contexts.**

Commentary:

- A. In addition to a representative's obligation to a client around language access (see interpretation assistance, above), an organization should ensure current and prospective clients are able to access services without regard to their linguistic competency. For organizations serving a diverse array of client populations, as many immigration legal service organizations will, this "requires a sustained and comprehensive effort for an organization to be accessible to all persons who are non-dominant language users or have limited proficiency in English."<sup>48</sup>
- B. Areas where an organization should focus its language justice energies include:
  - a. Development of a language justice plan
    - i. "Organizations should develop a practical written plan of how they intend to serve individuals whose dominant language is not English or another language commonly spoken by the organization's staff. They should use local data to inform the plan and reach out to multiple sources to understand all language and disability needs in the service area."<sup>49</sup>
  - b. Intake
    - i. As the first and often most crucial encounter with an organization, intake processes should account for all language needs through bilingual staff or access to accessible real-time interpretation. Additionally, information posted on an organization's website about intake policies and procedures should be similarly translated.
  - c. Brochures and other client-facing documents:
    - i. Many organizations offer non-client brochures or, for many immigration matters, checklists of documents or descriptions of case processes. An organization should ensure that all such documents are translated to the language(s) of their primary service population(s).

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<sup>48</sup> American Bar Association's Standards for the Provision of Civil Legal Aid, Standard 5.7, pg. 194.

<sup>49</sup> Id at 198.



## CULTURAL COMPETENCY

**Standard 4.4 of ABA Legal Aid Standards: A legal aid organization should ensure that its staff and governing body has the awareness, attitude, skills, knowledge, and resources necessary to provide assistance in a culturally competent manner and in order to be responsive to, and aligned with, the interests of those people most affected by poverty, racism, discrimination, and other forms of structural oppression.**

### Commentary:

- A. As noted in the ABA guide, “this Standard encourages legal aid organization to build long-term relationships with clients and communities in ways that acknowledge lived experiences, create partnerships that can shift power to communities, and challenge the structural oppressions and exclusionary practices that created the need for legal services...This Standard and commentary address the specific responsibility for legal aid organizations to understand the impact of oppression related to race, gender, LGBTQ+ identity, ethnicity, ability, language, and culture on the delivery of legal services and the justice system. A legal aid organization has a responsibility to address impediments that arise on a structural, institutional, and individual level within the organization that prevents effective responsiveness, accountability, and legal representation to individuals. Organizations are encouraged to understand the different types of racism and discrimination and the practices of cultural humility and cultural competence.”<sup>50</sup>
- B. In the immigration space, steps towards achieving this standard might include:
  - a. Mandated trainings for all staff on the dynamics of cultural competence and systemic racism, ideally in a setting that allows staff to reflect on their own biases, prejudices, and experiences of oppression;
  - b. Implementation of hiring and retention practices that help ensure the make-up of organizational staff reflect the diversity of the population being served;
  - c. Creation of partnerships with community groups and trusted community leaders to stay rooted and accountable to community need; and
  - d. Conducting an audit or assessment “to understand internal factors that impede both community-based accountability and client and community access as a result of institutional racism and additional oppressions.”<sup>51</sup>

## INTAKE CHANNELS

**Standard 5.1 of ABA Legal Aid Standards: A legal aid organization should design and operate an intake system that reflects strategic decision-making and treats all persons seeking assistance with respect, accurately identifies their legal needs, and promptly determines the assistance to be offered. It is**

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<sup>50</sup> American Bar Association’s Standards for the Provision of Civil Legal Aid, Standard 4.4., pg. 194.

<sup>51</sup> Id.

**important that intake systems are developed with user-based design principles, have been tested for accessibility for users, maintain the confidentiality of prospective client information, and have been evaluated through usability studies.**

Commentary:

- A. In creating and implementing an intake system, organizations should strive to encounter clients where they are most comfortable, reduce as many barriers to intake access as possible, and create efficient, informative, and clear means for assessing new cases, whether or not they are accepted for representation. Ensuring immigrant clients have access to responsive intake systems will help steer them away from exploitative immigration service providers,<sup>52</sup> alleviate client stressors and fears, and drive services to those who need them most acutely.
- B. The ABA standard divides the issue of intake channels into a series of considerations, all of which have resonance for immigration-focused organizations. In lieu of detailing the related immigration factors, organizations should become familiar with the Standard as outlined there.<sup>53</sup>

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<sup>52</sup> See, e.g., <https://stopnotariofraud.org/>.

<sup>53</sup> American Bar Association's Standards for the Provision of Civil Legal Aid, Standard 5.1, pgs. 167-173.