

# **Business Immigration Ethics**

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# Sources of Ethics Rules

- **8 CFR § 1003.101- 109 - BIA,  
Immigration Courts and DHS**

<http://www.ecfr.gov/cgi-bin/text-idx?SID=df9b76d063e152ec1b27aedfa71e0d79&node=8:1.0.2.4.2.7.1.1&rgn=div8>

- **State Bar Rules – In Texas this is the  
Texas Disciplinary Rules of Professional  
Conduct**

[http://www.texasbar.com/AM/Template.cfm?Section=Grievance\\_Info\\_and\\_Ethics\\_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96](http://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96)

# Issues

- **Who is the client(s)?**
- **Which rules apply? – It depends on who files the grievance.**
- **What are the attorney's ethical obligations?**
- **What is the “public interest”?**
- **Practical Considerations.**

# **Hypo 1 – Consular Processing – Misrepresentation of a Material Fact.**

## **Facts**

- Employer has valid E-2 registration.
- Alien has E-2 interview scheduled.
- Attorney ascertains from employer's U.S. manager that alien has been working in the U.S. without employment authorization and intentionally misrepresented information on DS-160.
- Question – Have you ever been unlawfully present, overstayed the time granted by an immigration official or otherwise violated the terms of a U.S. visa?
- Answer – The alien answered no.

# 8 CFR §1003.101- 109

## 1003.101 General Provisions.

- (a) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board and the Immigration Courts when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in §1003.102. In accordance with the disciplinary proceedings set forth in this subpart and outlined below, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

## **§1003.101 General Provisions (cont.)**

- (1) Disbarment, which is permanent, from practice before the Board and the Immigration Courts or the DHS, or before all three authorities;
- (2) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the DHS, or before all three authorities;
- (3) Public or private censure; or
- (4) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

## **§1003.102 Grounds**

It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law. A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:

## **§1003.102 Grounds (cont.)**

(c) Knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

## **§1003.102 Grounds (cont.)**

- (f) Knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:
- (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,
  - (2) Contains an assertion about the practitioner or his or her qualifications or services that cannot be substantiated. A practitioner shall not state or imply that he or she has been recognized or certified as a specialist in immigration and/or nationality law unless such certification is granted by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certification;

## **§1003.102 Grounds (cont.)**

- (o) Fails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.

# **Texas Disciplinary Rules of Professional Conduct**

## **Rule 3.03 Candor Toward the Tribunal**

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
- (3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;
- (4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (5) offer or use evidence that the lawyer knows to be false.

# **Texas Disciplinary Rules of Professional Conduct**

## **Rule 3.03 Candor Toward the Tribunal (cont.)**

- (b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.
- (c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

# **Hypo 2 – Consular Processing – Misrepresentation of a Material Fact – Attending School of B-2 Visa Facts**

- Principal and family in U.S. on B-1/B-2. Children attending public school.
- Attorney files nonimmigrant petition with USCIS and petition approved.
- After the petition is approved, attorney ascertains from principal the principal's children have attended public school in Texas.
- DS-160 questions – Have you ever sought to obtain or assist others to obtain a visa, entry in to the U.S., or any other U.S. immigration benefit by fraud or willful misrepresentation or other unlawful means?
- DS-160 questions – Have you ever been unlawfully present, overstayed the time granted by an immigration official or otherwise violated the terms of a U.S. visa?
- FAQ issued by the Texas Education Agency - 19. Can a foreign student attend school in Texas when he enters the country with a tourist visa? A foreign student cannot attend Texas public schools on a full-time basis with a tourist visa as this would be in violation of his/her visa status. However, the school district cannot deny the student enrollment on the basis of his/her visa status. The student only has to demonstrate

# Issues

Who is the client(s)?

What are the attorney's ethical obligations?

# Hypo 3 – Requirement to Withdraw H-1B Petition and LCA

## Facts

- Petitioner files H-1B petition which USCIS approves.
- Alien subsequently ports from old employer to new employer.
- Petitioner terminates alien.
- H-1B regulations at 8 CFR §214.2 (H) 11(i)(A):

(11) *Revocation of approval of petition*—(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

# **Hypo 3 – Requirement to Withdraw H-1B Petition and LCA**

## **Facts (Cont.)**

- Liability back wages ceases when the employee is terminated. However, an employee may not be considered properly terminated for purposes of cutting off back pay and front pay unless the employer follows 20 CFR §655.731(c)(7)(ii) and: (1) notifies the employee; (2) notifies the USCIS that the employment relationship has terminated so that the I-129 petition is cancelled; and (3) provides the employee with payment for transportation home pursuant to 8 CFR §214.2(h)(4)(iii).

# Issues

Who is the client(s)?

What are the attorney's ethical obligations?

# Practice Pointers

1. Be prepared, do your homework and read the law and regulations.
2. Have a written engagement letter and review this periodically.
3. Read the USCIS rules and the state bar rules.
4. Join AILA and find someone to bounce ideas off concerning ethical issues.
5. Everyone makes mistakes and develop a process to deal with ethical issues.
6. Be a zealous advocate for your professional integrity.
7. Communicate in writing with your clients.