ETHICS IN A BRAVE NEW WORLD

PROFESSIONAL RESPONSIBILITY, PERSONAL ACCOUNTABILITY,
AND RISK MANAGEMENT FOR IMMIGRATION PRACTITIONERS
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The Visa Processing Guide

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Advocacy Publications*
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—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers

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“Law is a compromise between moral ideas and practical possibilities.”

—Reinhold Niebuhr

“... to do right is noble: to advise others to do right is also noble and much less trouble for yourself.”

—Mark Twain

“A good lawyer can always get mad if somebody pays him for it, but after you’ve been paid a few times for getting good and mad, you hate like the deuce to get mad on your own when nobody’s paying for it.”

—Perry Mason

(Erle Stanley Gardner’s The Case of the Amorous Aunt)
# ETHICS IN A BRAVE NEW WORLD

PROFESSIONAL RESPONSIBILITY, PERSONAL ACCOUNTABILITY, AND RISK MANAGEMENT FOR IMMIGRATION PRACTITIONERS

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FOREWORD

AILA’S COMMITMENT TO INTEGRITY AND ETHICAL PRACTICE

by Paul L. Zulkie*

“No brilliance is needed in the law. Nothing but common sense, and relatively clean fingernails.”

These are the words of John Mortimer, the British author best known for the “Rumpole” series of short stories. While lawyers often laugh at such observations about our profession, the issues of competence and ethics in the practice of immigration law have never been more important and vital to our success in representing our clients.

I sincerely believe that most AILA members hold themselves to the highest standards of practice skills and ethical behavior because they think it’s the right thing to do. While the fear of malpractice suits or disciplinary actions are realities that must be taken seriously, the fact that we have our clients’ lives in our hands remains all the motivation most of us need to take these obligations to heart.

Regrettably, in the last few years we have witnessed an unprecedented shift in the practice environment for immigration lawyers. The post-9/11 emphasis on enforcement has significantly increased the pressure on attorneys seeking relief for their clients. When does creative lawyering and zealous representation cross the line and subject attorneys to accusations of obstruction of justice? The “Culture of No” that continues to hold federal agency personnel in a trance-like state has converted what once were routine business-immigration matters into nightmare scenarios none of us could ever have foreseen. Nevertheless, our clients have become increasingly demanding about what they expect from their attorneys and less forgiving of what they perceive to be errors or excuses when attorneys fail to meet their expectations.

There is another reason AILA members must continually strive to maintain the highest ethical standards. Along with our competence and training, a focus on ethical behavior sets us apart from the ever-growing cabal of individuals engaged in the unauthorized practice of law. Stories about the broken lives of immigrants and exploitation of the innocent are all too familiar. Combating those that exploit immigrant communities in court, before legislative bodies, and in the media is far easier when the standard against which UPL providers are measured is an immigration bar that takes self-regulation and integrity seriously.

At AILA, we have made raising the ethical standards of our membership a priority. This publication is being distributed to all members free of charge. All of our panels at CLEs and teleconferences are instructed to integrate ethical considerations into the presentations. Articles addressing professional responsibility have become commonplace in AILA publications. Our Ethics and Professionalism Committee serves as a clearing house for information on ethics-related cases around the country and brings emerging trends to the attention of our members. AILA’s chapters are encouraged to have standing ethics committees that serve as a resource and sounding-board for individual AILA members with concerns about ethical issues arising in their practices.

If Horace Rumpole were an AILA member, he would read Ethics in a Brave New World cover-to-cover, and never forget the importance of common sense and clean fingernails.

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Just months before the 9/11 attacks, The Washington Post quoted an INS spokesperson as saying immigration "is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold."

I couldn’t agree more; yet as we begin practicing in the new millennium, evidence of some tarnishing mounts.

Reflecting on today’s "Culture of No," the remarkable Elizabeth Gervais-Gruen, who is among the deans of actively-practicing immigration attorneys, expresses bewilderment as to why “they [the government] want to make it so hard.” Not that, Elizabeth attests, it was ever easy during her nearly 50 years of immigration practice.

On the first anniversary of the Department of Homeland Security (DHS), my local newspaper, the News and Observer, asked me to evaluate the success of the DHS immigration provisions, and my (fair and balanced) conclusion was, “It’s too early to tell.” No one can fairly lay the blame for a broken immigration system on the legitimate national security concerns that were highlighted in the aftermath of 9/11. Dry rot and neglect of the institutional infrastructure and the corrosive bureaucratic culture is decades old and never has proven amenable to cosmetic fixes on the cheap.

But if the News and Observer asked me to revisit the question today, I would now have fewer reservations and little reluctance in concluding that the promised life supports were lost in transit and that the patient is comatose and terminal.

Technology has made us better able to serve our clients; yet despite our being available 24/7, we often can’t get the simplest response from U.S. Citizenship and Immigration Services (USCIS). USCIS’s promise of reducing processing backlogs is illusory, even as quota backlogs loom on the horizon. Fundamental liberties are suspended in the name of national security. Frustrated clients are increasingly—and fortunately thus far figuratively—tempted to kill the messenger. To sustain lifestyles unimaginable to any previous generation, we are tempted, or sometimes feel forced, to chase incredible billable hours.

Immigration attorneys, once almost immune to the pervasive jokes told at the expense of other lawyers on talk shows, at social functions, and within their own families, now face a reality that is no joke. Recently, AILA immediate past-President Palma Yanni, noted in an Immigration Law Today (ILT) article that a former Florida AILA member was “sentenced to more than eight years in prison after being convicted of fraud and conspiracy in the filing of thousands of religious worker and multinational executive petitions.” Afterwards, another AILA member was convicted in Virginia, in connection with filing phony labor certifications.

Palma also noted, “Three other members in Washington, D.C., Maryland, and Virginia have been arrested on similar charges, and an assistant U.S. attorney in northern Virginia has announced his intention to prosecute AILA members.”

This year, the North Carolina State Bar’s Grievance Committee transferred a veteran Carolinas Chapter member “to disability inactive status pursuant to a consent order,” stipulating that the attorney suffers from “mental disorders that significantly impair her ability to practice law.” Shortly thereafter, the attorney was indicted for allegedly arranging a sham marriage, and “filing legal papers with authorities falsely claiming

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that another immigrant was gay and would be persecuted if sent back to Egypt.” The clients in the 19-count indictment were working as government informants. Also indicted was the attorney’s 27-year-old daughter, who worked as her paralegal.

Times are changing. Palma Yanni noted that in the District of Columbia, immigration matters now “receive the lion’s share of complaints against attorneys.” She went on to say: “In a distressing corollary, AILA members increasingly find themselves filing complaints against other members for ineffective assistance of counsel under the Matter of Lozada rubric. The BIA has left us little choice.”

Yet, should this prove to be, in King Richard III’s words, “the winter of our discontent,” it would be irresponsible to simply damn the system and not make every effort to wrest control of our own destinies. We must acknowledge that at least some of the fault is, after all, in ourselves and not in our stars.

In a changing world, AILA’s leadership has sought to respond to its members’ needs for mentoring and to provide tools addressing a wide range of professional development issues. Even with powerful tools, such as the AILA InfoNet, the challenge can be daunting. In 1994, AILA had 3,700 members; in 10 years, our rolls have grown by nearly 5,000 and will soon reach 9,000. A comprehensive member survey conducted in late 2002 indicated that a quarter of our membership are under the age of 35; more than half of the survey participants have belonged to AILA less than six years; and 25 percent have been members for less than three years. In 1998, AILA’s Board of Governors passed a resolution urging each chapter to establish an ethics committee and to hold an annual continuing legal education event devoted to ethics. In her ILT article, Palma Yanni wrote that “ethics must be more than an annual event; it must be ingrained in every action we take each day we represent a client.”

The all-member distribution of this ethics and professional responsibility anthology is to further awareness of the landmines we traverse daily, and to hopefully serve as a trip-wire for our individual and collective consciences. And it is distributed with the hope that it will be a tool to help its readers start to wrest control of their personal destinies. Despite the turbulent times we practice in—no, more accurately because of the turbulent times we practice in—the author fervently believes that the practice of law, particularly of immigration law, is both a high calling and a privilege.

Elsewhere in this book is quoted the late Carrol W. Weathers who said an attorney “occupies a preferred station of leadership, possesses exceptional influence, and it not only is his privilege but his duty to use his influence and position on behalf of a better social order, and live as a worthy example to others.” The quote bears repeating.

Before Garry Trudeau, there was Walt Kelly. Kelly’s daily Pogo comic strip, at its zenith, was arguably more influential than Doonesbury, and indisputably better drawn. Kelly was a fearless opponent of Joseph McCarthy and all that he stood for. The message of one of my favorite strips is conveyed on a sweet note. One of the animal children is talking with Porky, the porcupine, a featured bit player who is the swamp’s resident curmudgeon. The child has evidently heard a sermon by the Deacon, a card carrying member of the Okefenokee Swamp Chapter of the Jack Acid (read, John Birch) Society. The Deacon would still be readily recognizable in the political world of the 21st century:

“The Deacon,” relates the child, “says how can GOD be DEAD when He’s always in the BOOK?” Porky responds: “Does he mean pressed in the PAGES? Like a DRIED FLOWER? A nostalgic MEMENTO? The Everlovin’ real flowers are OUT, living in the fields, in the forests, in the world … fair, and fragrant, and WITH us.”

While “Stop to Smell the Roses” is but a part of the message shared by Judge Carl Horn, III, in his article, “Twelve Steps Toward Fulfillment in the Practice of Law,” it is a message often neglected by busy attorneys. Neglected at our own peril!

In addition to Judge Horn, the following people deserve their share of the blame for this publication: at the AILA National Office—Tatia L. Gordon-Troy, AILA’s Associate Director of Publications and this vol-

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WHY AN ETHICS BOOK? WHY NOW?

Volume’s Managing Editor; Randy P. Auerbach, Director of Publications; Executive Director Jeanne Butterfield; Amy Novick, AILA’s former Programs Director; and Susan D. Quarles, Deputy Director of Finance & Administration. Also my sincere thanks to Palma R. Yanni and Paul L. Zulkie, under whose watches this project was conceived and executed, as well as the other members of AILA’s Executive Committee for their vision and support; my wife, Sally Pinnix; Margaret Murray; Sidney Gill; my law partner and associate editor, Lynn Calder; my assistant, Sue Grasso-Bocchino; Alice Glover and the other members of my firm of Allen and Pinnix, P.A., who took up some of the slack to free me for this project; former Congressman Nick Galifianakis; contributing editors Edwin R. Rubin and Michael Maggio; David E. Walker; Bruce A. Hake; Peter Williamson; Kay Adams; Mark J. Newman; Russell C. Ford; Royal F. Berg; Moises Hernandez; Alfonso Caprara; Hamel Vyas; Donald S. Skupsky; James G. Gavin; Elizabeth Gervais-Gruen; Denise C. Hammond; Judge Horn’s clerk, David Grigg; and contributing editor Robert E. Juceam and his colleagues at Fried, Frank, Harris, Shriver & Jacobson LLP—Dian R. Gray and Nia Fripp, as well as summer associates Jeremy Goldman, Marc Romanoff, and Victor Suthamanont, and intern Raquel Aragon.

In Ben Schott’s words, “To them my thanks are due for suggestions, advice, encouragement, expert opinions, and other such things. If glaring errors exist within this book, it’s probably their fault.”

Seriously, thank you.

JOHN L. PINNIX
RALEIGH, NORTH CAROLINA
SEPTEMBER 2004

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2 Ben Schott, Schott’s Original Miscellany (Bloomsbury, 2002).
ABOUT AILA

The American Immigration Lawyers Association (AILA) is a national bar association of more than 8,500 attorneys and law professors who practice and teach immigration law. AILA member attorneys represent tens of thousands of U.S. families who have applied for permanent residence for their spouses, children, and other close relatives. AILA members also represent thousands of U.S. businesses and industries that sponsor highly skilled foreign workers seeking to enter the United States on a temporary or permanent basis. In addition, AILA members represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. AILA is also the premier publisher of immigration law titles and periodicals. Founded in 1946, AILA is a nonpartisan, not-for-profit organization that provides its members with continuing legal education, information, professional services, and a multitude of publications on immigration topics, while providing expertise through its 35 chapters and over 50 national committees. AILA is an affiliated organization of the American Bar Association and is represented in the ABA House of Delegates.

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