

## **Avoiding complaints in immigration matters**

by

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The Director's Office has seen an increase in the number of complaints against immigration attorneys. Part of this increase can be attributed to the growth in the practice of immigration law. There is more and more demand for immigration lawyers, and more and more lawyers are handling immigration matters. Thus, an increase in complaints against immigration lawyers would naturally be expected, as well.

Also fueling the growth in complaints against immigration lawyers may be the requirement that a person seeking relief in an immigration matter based on a claim of ineffective assistance of counsel must file a complaint with the lawyer disciplinary agency of the jurisdiction in which counsel is licensed or explain why one was not filed. *Matter of Lozada*, 19 I & N Dec. 637, 639 (BIA 1988); see *Ismailor v. Reno*, 263 F.3d 851, 853 (8<sup>th</sup> Cir. 2001). Thus, persons who might otherwise have sought relief only through the immigration system claiming ineffective assistance of counsel must also file a lawyer discipline complaint.

Immigration practice has many aspects particular to it. Complaints against immigration lawyers, however, often mirror those against other lawyers. Several of the complaints the Director's Office has received against immigration lawyers have arisen out of the termination of representation. Most are avoidable. A recent example before the Director's Office illustrates the point.

### **Substitution of counsel**

The client retained a lawyer to represent the client in an asylum proceeding. The initial attorney-client agreement stated that the lawyer was not obligated to represent the client in removal proceedings. The lawyer filed the client's asylum application with the immigration court in Baltimore, Md.

The application was denied and the client was put into removal proceedings.

The lawyer and the client then discussed the possibility of the lawyer representing the client in removal proceedings. Because the client was moving to Seattle, Wash., the client and the lawyer agreed that the lawyer would file a motion to change venue from Baltimore to Seattle and the client would hire new counsel.

In immigration proceedings, substitution of counsel may be permitted upon written withdrawal of the attorney of record or upon notification of the new attorney; the former attorney remains attorney of record until released by the court. 8 C.F.R. sec. 192.4(a). The lawyer filed the motion to change venue, which was granted. The client retained successor counsel, who confirmed to the lawyer that she was taking over the case and agreed to file a notice of appearance with the immigration court. Successor counsel did not, however, file the notice, and lawyer did not file a motion for withdrawal of counsel either. Accordingly, the lawyer remained listed as attorney of record.

The immigration court subsequently notified the lawyer of a hearing. Because the lawyer's office had closed its file, the notice was simply placed in the file. Neither the client nor successor counsel had actual notice of or attended the hearing.

After the hearing date, the court contacted the lawyer to determine why the lawyer had not appeared. The lawyer contacted the client and successor counsel, who worked on the matter thereafter.

When the lawyer terminated representation before the court allowed the lawyer to do so, the lawyer violated the Rules of Professional Conduct. Additionally, upon termination of representation, the lawyer had an obligation to take reasonable steps to protect the interests of the client. The lawyer should have continued monitoring the file for a reasonable period of time to facilitate the substitution of counsel. This included forwarding notices of hearings. Failing to do so violated the Rules of Professional Conduct.

Although in many ways a unique area of practice, many of the ethical issues immigration lawyers face are faced by all lawyers. Paying attention to these issues can reduce the rate of complaints.