

Making Ethics Really Matter

By Michael Maggio

AILA'S LEADERS, AT EVERY LEVEL of the organization, are doing more than ever to focus on the importance of ethics in the practice of immigration law. AILA's leadership, as well as this author, however, can and must do more if ethics is to really matter to AILA's membership.

We must accept the fact that we are in the midst of an immigration ethics crisis. The worst consequences of this crisis are ruined lives for many foreign nationals and their American employers and families. Witnesses to this crisis agree that immigration clients are hurt most by so-called immigration "consultants," or notarios, who practice immigration law illegally. Waging war against the unlawful practices of notarios is essential, and AILA has successfully fought notarios in Texas and is in the midst of a pitch battle against notarios right now in New York. Clients also are hurt by immigration lawyers who do not know enough immigration law, and/or who do not care enough about their clients. But heightening ethical standards among immigration lawyers is more complicated but surely no less important than AILA's fight against notarios, and doing so enhances AILA's credibility in its fight against notarios.

AILA has sought to heighten ethical awareness and standards by providing to every AILA member a copy of its new, excellent publication, *Ethics in a Brave New World*. This book underscores the importance of ethics and is a highly informative and useful resource. AILA's leadership also has called for an ethics officer in every AILA chapter, and this and other efforts are important to the ethically guided practice of immigration law. Yet these efforts, however laudatory, do not address the root causes of most serious ethical problems among immigration lawyers: too many immigration lawyers do not know the complexities of immigration law sufficiently, and too many do not care enough about their clients and their cases.

Complexity of Practice

To understand and address the fact that immigration lawyers too often become entangled in ethical predicaments—ultimately hurting those they are committed to help—requires AILA's leaders to focus on how hard it is to practice immigration law effectively and to look beyond their own practices, which for the most part involve business immigration law where the "conflict of interest" is the most common ethical dilemma. Unlike most of AILA's leadership, the majority of AILA's membership has been practicing immigration law for less than five years, many as solo practitioners. Their practices focus on family-based and labor certification cases, along with deportation defense, admissibility problems, and political asylum. New immigration lawyers and solo practitioners generally have many more individual foreign national clients than institutional clients. Their clients often have little money or education and have the greatest needs, making them the most vulnerable to attorney neglect and abuse.

At the same time, the areas of immigration law where these AILA members concentrate their practice are far more complex than most aspects of business immigration law. Sure, drafting a labor certification application is "an art," but let's be honest, it is nowhere near as complicated as, for example, understanding the immigration implications of criminal convictions. Similarly, understanding what it takes to get waivers of inadmissibility, or the differences between the cancellation and §212(h) stop-clock rules, and understanding how to craft a winning asylum application are far more



challenging than, for example, preparing volume-based H and L applications. Little wonder so many outstanding business immigration lawyers decline to handle such cases. Likewise, it is not surprising that AILA lawyers who primarily practice non-business immigration law too often make life-altering mistakes, and eventually they face bar complaints and *Lozada* motions to reopen for ineffective assistance.

Additional differences between most of AILA's leadership and the rank and file are relevant here. Newer lawyers, for the most part, are still paying their law school loans. They, and many solo practitioners, face financial pressures that are in the past for most of AILA's leadership. These pressures cause some lawyers to take on more work than they should, and to sometimes accept totally hopeless cases. And although there is no question that the stakes are high for all immigration clients, they are higher for foreign nationals who face persecution or a lifetime of poverty for themselves and their families. These high stakes increase substantially when the children of foreign nationals do not know the land of their birth, or when American children could lose the land of their birth because their parent's immigration lawyer did not know enough, or care enough.

Say "Yes" to Mandates

State bar associations have the responsibility for policing and disciplining ethical →

Making Ethics Really Matter: *A Response*

By Palma R. Yannì

AILA WAS FOUNDED NEARLY 60 YEARS AGO “to elevate the standard of integrity, honor, and courtesy in the legal profession; and to cherish the spirit of cooperation among members thereof.” Our goals have not changed, and as AILA President, 2003–04, I called upon all of us to “re-dedicate ourselves to the highest ethical standards, and continue our decades of mutual respect and collaboration to make AILA’s name synonymous with integrity and honor.” (22 *ILT* 6 (Nov./Dec. 2003))

AILA leadership comes from a variety of practices. And the majority of elected directors, chapter chairs, and executive committee members do not practice exclusively business immigration law, but also represent families and engage in removal defense. In his editorial, Michael Maggio has pointed to some of the difficult issues faced not only by AILA leaders, but by our increasingly youthful membership—75 percent of whom are in firms with three or fewer attorneys, including 50 percent in solo practice. Immigration law itself is overwhelmingly complex, and the added challenges of managing an office can overwhelm an attorney of any age and experience level. This, rather than evil intent, results in mistakes that can be devastating to our clients.

Being Proactive

Each time we see an article in the news about an immigration lawyer being convicted of fraud, or meet with a potential client whom we cannot help because of a notario’s or prior attorney’s errors, our hearts grow heavy. We want to turn back the clock and erase the blot on our profession, and, more importantly, save the victim’s future. But we cannot, so we must take steps to prevent another incident from happening, and AILA is being proactive on many levels as noted by the following:

■ As Michael points out, the new AILA publication, *Ethics in a Brave New World*, has been sent free of charge to every AILA

member. AILA is in the process of developing a “Welcome” package in DVD format for all new members that will include a discussion of the importance of maintaining the highest ethical standards, and the role that CLE programs, the Young Lawyers Division, and AILA’s mentor system play in attaining that goal.

■ At our annual conference in June, in cooperation with the Ninth Circuit Court of Appeals, we are introducing an innovative three-hour panel that will focus on legal writing and practice skills for attorneys who are just starting to venture into federal court.

■ Further, chapters are urged to appoint an ethics committee and hold an annual continuing legal education event devoted to ethics pursuant to an AILA Board of Governors resolution passed in 1998. The current national ethics committee, of which Michael is a member, plans to propose specific duties for those officers.

■ AILA’s conference planners instruct discussion leaders for each seminar on including ethical issues within their specific topic area.

■ AILA’s bar journal, *Immigration Law Today*, includes an article on ethics and professional responsibility, frequently authored by Michael Maggio.

■ AILA’s teleconference series regularly includes ethics; and a recent teleconference focused on ethical issues and practice management tools for new immigration practitioners.



■ The next generation of AILA InfoNet will include extensive materials on ethics and practice management readily available for every member’s use. Soon to be unveiled to AILA membership, plans include posting ethics articles; FAQs on ethics and immigration law practice; sample fee agreements, termination of attorney-client relationships, and other management tools; links to the ABA model rules and each bar’s ethics page; disciplinary decisions involving immigration attorneys; and, possibly, an “Ask the Ethics Experts” e-mail Q&A.

Say “No” to Mandates

But we cannot rest until there are no more headlines announcing convictions of immigration lawyers, and no more helpless victims visiting our offices. In my view, however, mandating CLE as a condition of membership likely will detract from the goal of enhancing the level of practice of our members. A bylaw amendment, which would be required to implement a CLE requirement, likely will discourage or exclude those who need us most. Inexperienced or struggling immigration attorneys can greatly benefit from access to our message boards, mentors, the planned ethics and practice materials, and the daily updates provided to all members through InfoNet. Only AILA provides comprehensive materials to guide practitioners through the labyrinth of immigration law. We need to keep our doors open to all immigra- →

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recalcitrance. Certainly, AILA, as a national association, has a limited capacity to police its membership. But AILA can better communicate that it does not tolerate ethical neglect and incompetence. Some AILA leaders have claimed that AILA may face liability if the Association, as an institution, disciplines those members who shame us. Perhaps, but has AILA sought a legal opinion and guidance for outside counsel on this important issue? If not, AILA should.

AILA certainly can require CLE time as a condition for membership. AILA's leadership should consider imposing such a membership requirement to help compel members to know and care more. AILA also should offer regular classes and consider requiring newer members to attend CLE sessions on matters as basic as the need for implementing intake questionnaires and proper file maintenance, calendaring due dates, enhancing client communication, accepting and declining cases, providing clients with copies, as well as the need for and the content of good representation agree-

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ments. A better understanding of these subjects, just like a better understanding of substantive immigration law, will lead to higher ethical standards. This will result in greater client satisfaction and greater revenues for AILA's members. When ethics really matters, immigration lawyers have more and happier clients, and they make more money. AILA's leadership must teach its membership how and why that is true.

The majority of AILA's membership will not believe that ethics truly does matter until they understand the nexus between their wallets and their hearts and minds. Stated differently, AILA must show its membership how and why knowing enough immigration law and caring passionately about clients can axiomatically lead to a more successful and lucrative practice.

Most immigration lawyers practice immigration law because they like working with and helping people. What is more, unlike most areas of law, immigration attorneys make a real difference in people's lives, and sometimes in the larger world, too. Most immigration lawyers do care, but some lose their way. AILA must help those who care about their clients but want and need help. AILA also must find ways to purge its membership of those who simply do not care and have no interest in learning how to be better lawyers.

An Ethics Crisis

Like with so many other problems, the need to do something is obvious, but what should be done is not. The following proposals are offered to stimulate discussion, additional ideas, and action. They reflect ideas that have been exchanged recently on a very active and informative criminal immigration listserve:

■ The AILA Executive Committee and Board of Governors should commit to raising ethics to the same level of importance within AILA as advocacy. Achieving that

goal should be a constant topic of discussion at every level of AILA's leadership until it is achieved.

■ AILA should hire outside counsel to investigate and advise AILA on the extent to which it can discipline members who engage in serious ethical violations. Leaving discipline to state bars, which often are reluctant to discipline, is passing the buck.

■ AILA's Education Department, and all AILA chapters, must expand their educational programs to include the mechanics of how to practice immigration law better. Law office management, and the substantive aspects of immigration law and procedures of greater concern to newer and solo practitioners, should be emphasized more.

■ CLE classes on how to better practice immigration law, substantive immigration law, and ethics should be mandatory to maintain AILA membership, especially for newer members.

■ AILA should enlist the support of EOIR and DHS to make ethics matter more. This should include putting ethics on the agenda for all EOIR/DHS liaison meetings, and advocating for a more liberal attitude from EOIR and DHS toward motions to reopen based on ineffective assistance of counsel.

■ AILA must continue to focus on ethical transgressions by lawyers and by notarios.

■ Every AILA chapter must have an ethics officer, and the duties of these ethics officers must be formulated and defined at the national level, both by a certain, agreed-upon date.

■ As part of its commitment to making ethics matter more, AILA must constantly remind its members that knowing immigration law, caring about our clients, and not lying to clients or the government are at the heart of immigration ethics, and that good ethics results in monetary as well as psychological income. **ILT**

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tion lawyers, and to assist our members in achieving the highest ethical standards.

Similarly, establishing a disciplinary board within AILA—even if it could be accomplished—would focus valuable resources negatively rather than positively on the education of our members and how best to practice immigration law.

Firmly believing that overwork and ignorance, rather than evil intent, causes most harm to clients, I offer suggestions based on carrots, rather than sticks, to encourage members to practice competently, ethically, and with integrity. Many of the following suggestions could be implemented promptly:

■ AILA could adopt, through a resolution of its Board, a Pledge of Professionalism like that of the ABA Young Lawyers Division (www.law.stetson.edu/excellence/litehics/abalyd.htm). Such a resolution would emphasize professionalism over business concerns, and include affirmative statements from members that they will achieve and maintain proficiency in practice, continue

to expand knowledge of the law, keep clients well-informed and involved in making decisions, and act courteously at all times.

■ AILA chapters could honor one member each year who exemplifies “integrity, honor, and courtesy in the legal profession.” This simple action provides a reminder to all of the goals of our Association.

■ AILA could annotate its member directory, noting how many CLE credits—both general and ethics—a member has accrued each year.

A longer range project could be to establish an ABA-approved immigration specialist certification program with rigorous practice and ethical standards similar to those in states that have certification programs. A taskforce within AILA considered this several years ago and made a detailed proposal that was defeated in a close Board vote. Perhaps the time has come to reconsider the idea of an AILA “seal of approval” for those who can demonstrate a high level of knowledge of immigration law and ethical behavior.

In Agreement

Michael and I agree that an ethical practice based on an attorney’s reputation for integrity, competency, and honesty is also a profitable practice. These suggestions, along with the added materials on the AILA InfoNet, the continuing efforts of AILA’s conference planners to provide an ethics component in all AILA seminars, and increasing emphasis on ethics and professionalism within each chapter as well as on the national level, will lead our members into ethical, professional, and profitable practices.

I join with Michael in his efforts to stimulate discussion, ideas, and action. 

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