

# Immigration Practice News

Volume 1: Issue 2



AMERICAN IMMIGRATION LAWYERS ASSOCIATION

## Legal Services Outsourcing

by [Leslie Dellon](#)

More lawyers may be considering outsourcing legal services such as the analysis of eligibility for a particular visa classification and the development of supporting documentation for the USCIS filing or legal research for court filings, as a way to cut costs. Is it ethical? The American Bar Association says “yes,” so long as the lawyer remains responsible for providing “competent legal services to the client.” See [ABA Formal Opinion 08-451](#) (2008). The ABA opinion is helpful, but you must follow the rules of your state bar. Rules to consider include those governing the protection of client confidentiality and secrets; conflicts of interest; duty to supervise; fees; disclosure to client; and UPL. [State Ethics Rules and Opinions](#).

### Ethical, and common sense, considerations:

- Interview the contract worker, review résumé and writing sample, check references, conflicts check.
- The lawyer must always be in charge of the contractor, not vice versa.
- Obtain client’s consent, if required. Generally, if client confidential information is going to be shared and the contracting lawyer cannot closely supervise and control the work, such as where the outsourcing contract is with a service that employs the personnel providing the services, then the client’s informed consent would be required. See [ABA Op. 08-451](#) at 5.



- Articulate clearly the scope of the project and review the work product for accuracy and completeness. Supervision cannot be abdicated, even though close supervision and control may not be possible.
- Obtain a signed confidentiality agreement.
- Safeguard electronic transfer of client data (for example, encryption). Confirm that the contractor maintains appropriate work site safeguards, such as who has physical access to the site and whether paper records are shredded before disposal.
- Billing must be consistent with the type of service provided and your jurisdiction’s requirements. For example, if you have non-lawyers providing legal support services, you may be restricted to billing only for the direct cost related to the outsourcing plus a “reasonable allocation” of directly associated overhead expenses or, if no overhead, of the cost of supervising the outsourced services if not already included in your fee. See [ABA Op. 08-451](#) at 6; [Ass’n of the Bar of the City of NY Comm. on Profess. & Judicial Ethics, Formal Opinion 2006-3](#) (2006).

In sum, while outsourcing may be permissible, the inherent difficulties with proper oversight may render it impractical for most practitioners.

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# Looking Before You Leap: Tips for Attorneys Bringing an Immigration Law Practice to a General Practice Law Firm

by [Brad Hendrick](#)

The recession has impacted most American industries, and law is no exception. Lay-offs were commonplace and *The American Lawyer* reports that profits were down in the 100 largest law firms. However, many small and mid-sized law firms reported modest growth, and these firms were able to take advantage of the pool of highly qualified attorneys to strategically grow and diversify into new practice areas.

Immigration lawyers practicing alone or in boutique firms may find themselves among this group of attorneys looking for a change. Moving to a general practice firm can bring diversification to the firm and help an immigration attorney weather the economic ups-and-downs of a niche practice. While not an exhaustive list, the following should be contemplated and discussed when evaluating a potential firm:

## Will everyone's clients benefit?

Evaluate whether the firm's current clients and practice areas will be a good source of immigration cases and whether the firm offers expertise in areas that can add value and solidify your relationship with existing clients. A synergy is necessary between the attorney and the firm.

## Systems and technical support

A visit to the annual conference exhibit hall demonstrates the role that technology plays in an immigration practice. Explore the firm's technological capabilities, case management systems, and overall attitude toward the use of technology.

## Billing, trust accounts and flat fees

A traditional firm may not be familiar with flat fee billing, and the accompanying trust account issues. An immigration attorney who uses flat fees should be prepared to spend time educating staff and working closely with firm management to ensure that a flat-fee practice can coexist within the firm's hourly system.

Support staff—Understanding the firm's position on the role of paralegals and support staff is especially important. Make sure that there is a mutual understanding concerning the need for and use of support staff in the immigration practice.

Make a business plan—Creating a business plan for the immigration practice provides a roadmap that will outline needs and expectations and establish metrics by which the new practice area will be evaluated.

Good luck in your new firm!

# Need More Help? Talk to Reid

In addition to the numerous sources of guidance on ethics and professionalism issues available on [AILA InfoNet](#), AILA provides you with access to a live expert to discuss your questions and practice issues: [Reid Trautz](#). He has provided advice to members on a range of practice issues, such as improving workflow and business processes, starting a law practice, marketing and client development, law office technology, fees and billing, selecting malpractice insurance, and maintaining trustworthy trust accounts. To arrange a telephone session or in-person meeting, please call 202-507-7647 or email [rtrautz@aila.org](mailto:rtrautz@aila.org). This service is free to all AILA members. Caveat: Reid does his best, but on some days it may take up to 24 hours for Reid to respond to your request.

## *Got Ethics?*

Several recordings of practical and informative ethics webinars are available for immediate listening, including:

[\*Ethics for the Immigration Lawyers Part I: Ethics, Clients and Money\*](#)  
(Recorded June 19, 2009)

[\*Ethics for Immigration Lawyers Part II: Navigating the Ethics of Fraud-Balancing Candor and Confidentiality\*](#)  
(Recorded September 17, 2009)

# Key Practice Concerns In Utilizing Paralegals

by [Kristina Rost](#)

The [ABA Model Rules of Professional Conduct](#) dictate certain rules for attorney representation of a client. By default—since there are no specific rules governing paralegals—these Rules transfer to utilizing paralegal help.

**Duty of Competence.** This duty extends from the attorney through the paralegal in client representation since the attorney must be aware of ALL cases being worked on by the paralegal and any deadlines affecting these cases. Competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for representation. As such, it translates into the paralegal's work under direct supervision by the attorney.

**Confidentiality of Information.** As a paralegal is a permanent fixture in the whole “legal representation” module, the attorney must make his/her paralegals aware that the attorney-client confidentiality privilege extends to them and that they have an affirmative duty to uphold this privilege. Periodic staff training to that effect proves to be very helpful.

Finally, there is this huge blurred line between “**authorized**” and “**unauthorized**” practice for the support staff. According to the [ABA/ BNA Lawyers' Manual of Professional Conduct](#), attorneys may violate the prohibition against assisting in another's unauthorized practice by doing the following. The list is by no means exhaustive:

- Improperly delegating duties to nonlawyer staff or inadequately supervising staff;
- Offering legal services to or accepting referrals from businesses whose nonlawyer employees provide legal service to customers; or
- Working with disbarred, suspended or out-of-state lawyers who are improperly practicing law.

Since we as attorneys face ethical dilemmas every day, and no one can be crystal clear on each given fact pattern, make sure that your staff are as conscious of immigration law ethics as you are and that they share the same principles of practicing defensively.

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Each sample on [The Practice Toolbox CD-ROM](#) is preceded by a cover sheet explaining when and how it should be used. The CD-ROM includes samples of documents covering

- office/case management
- client management
- marketing/advocacy
- ethical considerations
- consular processing
- employment-based immigration
- national interest waivers
- H-1B, Portability, AC21
- Family-based Immigration
- CSPA
- VAWA
- Naturalization
- Removal Defense



Visit our online bookstore to order your copy of AILA's indispensable [Immigration Practice Toolbox CD-ROM](#) or call 1-800-928-2839.



# What to Do About New Client “No Shows”

By [Reid F. Trautz](#), Director  
[AILA Practice & Professionalism Center](#)

Prospective clients who fail to show for their initial consultation are a part of practice life. Some lawyers don't always regret “a no-show” because it often opens up time in an otherwise busy day to finish work for existing clients. Some lawyers don't like it at all because they may have given up another important event or appointment. If you fall into this latter category, here are some ideas to reduce the “no-show” rate—in no particular order:

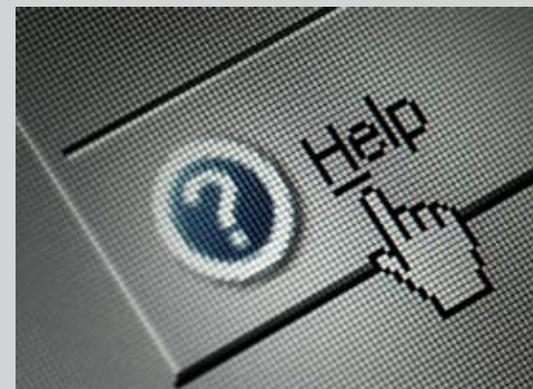
1. When setting the appointment get a credit card number to bill if the potential client fails to show. No, not my favorite tip either; too harsh and too many potential clients will say they don't have a credit card. However, it does get their attention that you mean business.
2. Double-book or overlap some of your appointments like the airlines overbook flights. Occasionally it will cause trouble, but how often?
3. Make a list of characteristics of the no-shows. What do they have in common? Do they come from the same referral source or have to travel far to meet you? Keep a list of those commonalities handy. When someone calls with those characteristics, consider getting that credit card in advance or double-book as mentioned in #2.
4. Check your client intake process up through the making of the appointment. Is something said or done to make potential clients uncomfortable or unconfident in your firm or abilities? Conversely, is there something that instills confidence? What reason are you giving them to keep the appointment? What more can you do or say in the process to get them excited about coming to see you? What you (or your staff) say and how you say it are important as to how a client views your potential value.
5. Call the potential client who is 15 minutes late and ask if there is a problem. If there is an excuse, express empathy and encourage another appointment. This shows you are paying attention. Then spend the rest of that free hour working on a case and/or marketing your practice. Make lemonade!
6. Send a client intake form in advance. If potential clients fill it out, they are more invested in the process than if they have not done anything before the appointment.

Got more ideas? Post them to the [Law Office Management](#) forum in the AILA Message Center!

## Useful Links

Practice tips and sources of advice on how to handle the unique challenges of an immigration law practice are just a “click” away:

- [AILA Career Center](#)
- [AILA In-Person Conference and Audio/Web Seminar Recordings](#)
- [AILA Podcast Library](#)
- [Practice Management Library](#)
- [AILA Ethics & Best Practices Message Forum](#)
- [AILA Law Office Management Message Forum](#)
- [AILA Marketing Your Law Practice Message Forum](#)
- [Resources for Starting a Law Practice](#)
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[leslie@hammondimmigration.com](mailto:leslie@hammondimmigration.com).*