

# IPN

## Immigration Practice News

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## Easy Steps Toward Sensible Security

### Better Protect Your Clients' Information with Complex Passwords, Reliable Backups

By [Sandra M. Wagner](#)

Protecting client information is imperative. Carefully selecting passwords and backup systems can help in achieving client protection. With so many applications, devices, and websites asking for passwords, it is tempting to pick passwords that are easy to remember, or to use the same password more than once. Although it can be tempting to write down passwords that are difficult to remember, passwords that are written down need to be kept in a safe, secure place. Passwords should not be sent out via e-mail.

To lower the risk of a security breach, use strong passwords and avoid using a previous password or only changing one

character within a password. Strong passwords are at least eight characters, and contain a mix of upper and lower case numbers, numerals, special characters and punctuation. They do not include dictionary words or personal information. There are applications available over the internet that can randomly generate passwords. However, this may also raise security concerns.

Another way to protect client information is to use a backup system to restore lost or damaged data. Solid state storage (flash drive, USB flash drive, thumb drive), magnetic tape drives, hard disk, and remote backup service are types of backup systems available.

Solid state storage is convenient and available in increasingly large capacities, but it can easily be misplaced. Some solid state storage devices come with

authentication and/or encryption software which protects the data should the device be lost.

Magnetic tape drives need to be tested on a regular basis to make sure the tape drive is functioning properly. A tape is kept off-site in a secure location and swapped out on a daily or weekly basis.

An alternative to magnetic tape

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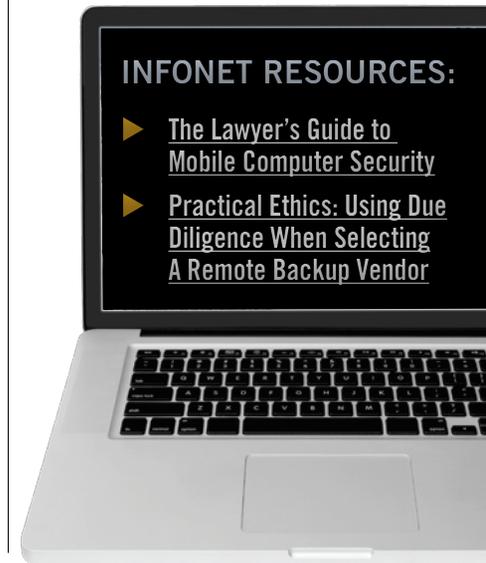


Bo Cooper

**THE NEW CLASSIC FROM AILA PUBLICATIONS:**  
*Business Immigration: Law and Practice*—Comprehensive Review, Extensive Citations, Practical Advice, and more!  
Accepting pre-orders beginning May 1 at [ailapubs.org](http://ailapubs.org).

**ISSUE HIGHLIGHTS:** Preparing for Death or Disability 2 The Pros and Cons of Outsourcing 3

AILA InfoNet Doc. No. 11032965. (Posted 03/29/11)



# Planning for Death and Disability

By Lisa Helen York

I hate to be the one to break the news to you—lawyers don't live forever. At some point in your legal career, it is likely you will face a disability that will prevent you from practicing or worse, you will die. So, what do solo practitioners need to do to prepare for the inevitable? The American Bar Association's (ABA) Standing Committee on Ethics and Professional Responsibility tackled this issue in a formal opinion titled "[Disposition of Deceased Sole Practitioners' Client Files and Property](#)." Solo practitioners have a fiduciary duty to protect their clients' interests even after the practitioners die. You may think, "What does it matter to me, if I'm dead?" Well, it matters to your family, friends and colleagues who will have to handle your affairs after you are gone. If you do not have a plan in place, the State Regulatory Board will step in and wind-up your affairs for you. Therefore, every solo practitioner should have a "Death and Disability Plan." Here are some key elements of a good plan:

**1** | Appoint an "assisting" attorney to handle your affairs. In deciding who to appoint and how to structure the relationship you need to figure out some keys issues in advance: Do you want your assisting attorney to take over your practice or wind-up your practice? Who does your assisting attorney represent—you or your clients? What happens if your assisting attorney discovers that you have made some serious errors that would need to be reported to your State bar? How are you going to pay your assisting attorney?

**2** | Make sure that you have all the important information (bank accounts, will, passwords, how to access your office, who to call for help/information, etc.) organized and in a place that is accessible to your assisting attorney. Make sure your assisting attorney knows where this information is located. Introduce your family, staff, and friends to your assisting attorney and have them exchange contact information. A great resource for helping you gather and organize this information is the book, *Being Prepared: A Lawyer's Guide for Dealing with Disability or Unexpected Events* by L. Cohen & D. Cohen (ABA 2008).

**3** | Maintain an up-to-date office procedure manual that includes the following information: how to conduct a conflicts check; calendar deadlines; generate client contact and status lists; where to find open and closed files, financial records, bank information; and how to access voicemail, computer, locked cabinets, etc.

**4** | Communicate your "death and disability plan" to your clients, and get authorization to disclose confidential information to your assisting attorney in your fee agreement or engagement letter.

**5** | Stay on-top of administrative matters (especially before you leave on vacation) including: calendaring deadlines, filing documents, case notes, time records and billing.

**6** | Have draft client letters ready to go.



**7** | Draft a will and update it regularly.

**8** | Maintain life and disability insurance. Make sure your family and assisting attorney are aware of these policies and provide them with the key information on who to contact and how to file a claim.

**9** | Review and revise your plan annually.

**10** | Keep your assisting attorney informed of changes.

It is easy to procrastinate preparing a death and disability plan because it is natural to avoid thinking about death. However, once you have your plan in place you will spend less time worrying about what will happen to your practice when something happens to you and more time enjoying the time you have left!

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*Lisa Helen York is a solo practitioner in Denver, Colo., who hopes her extraordinary clients will discover the path to eternal life while eradicating all disease, thus rendering the need for such planning obsolete.*

By **Romy Kapoor**

**I**n the current economic environment and with pressures from clients to reduce or maintain fees, the question arises whether outsourcing certain aspects of immigration case preparation might make sense. Considerations include: What work can reasonably be outsourced? Should you outsource off-shore or on-shore? What is the cost compared to keeping the work in-house? How do you manage workflow, oversee work, and ensure quality of work product? What are the ethical issues involved?

Outsourcing on its face seems to make the most sense in an immigration practice where the bulk of the work outsourced would be forms preparation, cover letter generation, or perhaps legal research. For example, an H-1B case where the vendor would complete and file the Labor Condition Application with the U.S. Department of Labor, prepare the I-129 petition forms, the cover letter to USCIS, and draft the employer's supporting letter. Or in a marriage-based case, the vendor would prepare various immigrant petition and adjustment of status (AOS) forms (I-130, I-485, I-765, I-864, etc.). Further, outsourcing may be a more viable option for a high-volume practice which can repeat a relatively standard format for petitions, or a sole or small office practitioner who does not want to take on the responsibility of in-house staff with the attendant costs of salaries, payroll taxes, benefits, etc.

Outsourcing rates are generally quite attractive. H-1B/E/L rates can range from \$100 - \$300, AOS packets from \$250-500, and naturalization applications from \$150-\$250. In the past, virtually all immigration outsourcing vendors, such as [Unicity Consulting](#) and [SDD Global Solutions](#), were exclusively off-shore (predominantly in India), but many, if not most, now have offices in the U.S. This can help maintain quality control and workflow management. With a good internet connection, communications

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# OUT SOURCING

When your firm's caseload is piling up, you may ponder outsourcing your immigration work. Romy Kapoor and Helena S. Younossi weigh the advantages and risks.



By **Helena S. Younossi**

**O**utsourcing your immigration work may be an attractive way to handle momentary spikes in work volume without the need to hire additional staff. What ethical issues would prevent smaller immigration firms from jumping on the outsourcing band wagon?

The ethical concerns, extensively addressed by [ABA Opinion 08-451](#), mainly focus on six areas: Disclosure to the client, proper supervision, confidentiality, compensation arrangements, conflicts of interest and unauthorized practice of law. This article addresses the potential need to disclose offshoring arrangements to the client.

According to [ABA Formal Op. 08-451](#), attorneys should advise a client of the fact that work may be performed by an offshore provider because offshoring generally involves a lower degree of supervision. If confidential information is shared, the client's consent is mandatory. This requirement of disclosure without the close supervision of a lawyer in the U.S. is also supported by [ABA Formal Opinion 88-356](#). Assuming close supervision, disclosure is still mandated where confidential information is shared with an outside provider. Furthermore, [ABA Formal Op. 08-451](#) states that "appropriate disclosures should be made to the client regarding the use of lawyers or nonlawyers outside of the lawyer's firm." A smaller firm's concern with disclosure may be twofold: Large firms that send their work to their own offices abroad are not under the same obligation. Additionally, a small firm's disclosure of such an arrangement may leave the client wary of the quality of work such an arrangement produces, and these concerns may appear validated to the client with each discovery of even a minor error.

Disclosure requirements also depend on the manner in which offshored work is billed to the client and whether or not the

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through email and inexpensive telephone and video conferencing through VOIP providers such as Skype, interacting with off-shore vendors can work just as well. Nevertheless there are significant ethical issues to be aware of involving control and oversight, client consent, confidentiality, and

billing as is very well presented in Helena Younossi's counterpoint article in this issue.

Looking at the rates, the administrative savings, and the volume and improving quality of vendors available, outsourcing casework is becoming a more

attractive option for practitioners large and small.

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work will be performed by a lawyer. [According to ABA Op. 88-356](#), the client is ordinarily not entitled to notice that its legal work is being performed by a 'temporary lawyer' and requires that outsourcing be disclosed only with the following billing arrangements:

- When the temporary lawyer's fee is directly billed to the client as a disbursement.
- When the arrangement between the firm and the temporary lawyer involves a direct division of the actual fee paid by the client.

Further guidance is provided through [ABA Formal Opinion 93-379](#), which addresses billing expenses and disbursements in the context of goods and services of nonlawyers. If the lawyer receives a discounted rate from a third-party provider, it would be improper if he or she did not pass along the benefits of the discount to the client. In billing clients for the fees and costs in connection with legal services, it is impermissible for a lawyer to create an additional source of profit for the law firm beyond that which is involved in providing professional services, absent client consent.

While these concerns should not be a show stopper to legal outsourcing, they certainly do warrant a careful analysis of the issues and an even more carefully crafted retainer agreement.

Remember your state rules and that the disclosure requirement is just one of the ethics issues to be studied.

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drives is the use of two external portable hard disks that also can be switched out daily or weekly. One risk is that a hard drive can be damaged in transport.

Remote backup services offer the convenience of a backup to a remote location; however, Internet connections may not be fast enough to handle large amounts of data. Most importantly, third-party service providers need to be vetted since they have access to client information. Weigh the advantages and disadvantages of a backup system before purchase. See Bill Snyder, [Why The Cloud Should Have Your Backup](#), PC World.

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## AILA'S ETHICS & PRACTICE MANAGEMENT COMMITTEE

offers 24/7 assistance to members through the [Practice and Professionalism Center](#). You can find information to help you develop your practice, improve firm management, identify and address ethics issues, or find pro bono opportunities. For example, the [Practice Management portal](#) includes resources for managing workflow, obtaining new clients, improving client service, and much more. The center reflects our goals as practitioners: to provide competent, quality services to our clients; to act ethically with respect to our clients and the tribunal; and to do well while doing good.