

IMMIGRANT LEGAL RESOURCE CENTER

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MEMORANDUM

TO: Persons Interested in Ethics and Standards of Practice
FROM: Susan Lydon, Coordinator of the National Immigration Paralegal Training Program
DATE: June 19, 1996
RE: MODEL CODE OF PROFESSIONAL RESPONSIBILITY FOR BIA ACCREDITED REPRESENTATIVES

Attached you will find a draft of a *Model Code of Professional Responsibility for BIA-Accredited Representatives*. This model code was written as a collaboration between our staff and accredited representatives around the country. It was inspired, in part, by the complaint heard occasionally (mostly from attorneys) that, while attorneys have a code of ethics to which they are bound, accredited representatives have no such code.

Purpose: This was created to be a *model* statement of the duties and ethical responsibilities of BIA-accredited representatives. It is not intended to be, and is not, an official statement of law or policy regarding BIA-accredited representatives. It was intended to be a voluntary statement of the ethical assumptions under which BIA-accredited representatives currently practice. We hope that BIA-recognized agencies employing accredited representatives will use it as a jumping off point for discussions of professional standards within their own offices.

Although it refers specifically to accredited representatives, the professional standards it is based on could apply equally to non-accredited immigration assistants.

Please Give Us Feedback: As you can see, this model code is still in "draft" stage. If you have any feedback on it, please let me know, either by fax at (415)255-9792 or by phone (415)255-9499, ext. 593.

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MODEL CODE OF PROFESSIONAL RESPONSIBILITY
FOR ACCREDITED REPRESENTATIVES

PREAMBLE

An accredited representative is a person who has been accredited by the Board of Immigration Appeals to represent immigrants unable to pay the customary fees charged by attorneys. The mission of accredited representatives is to help low and moderate income immigrants in the United States receive the rights and privileges that they are guaranteed under U.S. law. An accredited representative provides affordable, quality legal representation for those in need with respect to immigration and nationality law.

Accredited representatives are authorized to represent clients before the Immigration and Naturalization Service (INS), the Executive Office of Immigration Review (EOIR), and the Board of Immigration Appeals (BIA) in exactly the same manner as are attorneys. (See 8 CFR §292.1(a)(4).) Accredited representatives, therefore, have the same basic obligations to their clients as do attorneys in carrying out this representation. The purpose of this model Code of Professional Responsibility for Accredited Representatives is not only to act as a reference for the accredited representative in carrying out these duties, but to illustrate the values that an accredited representative embodies: integrity, professionalism, and exemplary service.

CANON 1 -

The accredited representative shall serve the public interest by contributing to the delivery of quality legal representation on immigration issues to people unable to afford to pay customary fees charged by attorneys and to the integrity of the legal system as a whole.

1.1: An accredited representative shall be committed to public service, and to addressing the needs of clients unable to pay customary fees of attorneys for legal services.

1.2: An accredited representative shall serve clients with compassion and respect.

1.3: BIA-recognized agencies for which accredited representatives work shall charge only the fees permitted by the governing regulations.¹

1.4: An accredited representative shall support the efforts of attorneys to render *pro bono* services to those unable to pay customary fees charged by attorneys.

¹ Current regulations permit recognized agencies to charge only "nominal fees". 8 CFR §292.2(a)(1).

1.5: An accredited representative shall not refuse services to a client due to the client's inability to pay.

CANON 2 -

The accredited representative shall provide clients with competent and zealous representation.

2.1: An accredited representative shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation..

2.2: An accredited representative shall act with reasonable diligence and promptness in representing a client. This includes diligence and promptness in preparing and filing documents for the client.

2.3: An accredited representative shall advocate zealously for the client, within the bounds of the law. The accredited representative should employ professional discretion in determining the means by which a matter should be pursued.

2.4: An accredited representative shall participate in continuing education to keep informed of current legal, technical and general developments.

2.5: An accredited representative shall insure that he or she does not accept more cases than he or she can competently represent.

2.6: An accredited representative shall exercise independent professional judgment in each case. The representative shall be free of compromising influences and loyalties. The representative shall not be prejudiced by either professional or personal interests.

CANON 3 -

The accredited representative shall be mindful of the responsibility owed to the client.

3.1: An accredited representative shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

3.2: An accredited representative shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation. The accredited representative shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.

3.3: An accredited representative's primary loyalty is to the client.

3.4: An accredited representative shall not participate or conduct work on any case in which he or she has a conflict of interest.

3.5: If an accredited representative represents more than one client in a matter, the representative should be aware of potential conflicts of interest between the clients and inform each of the clients of the benefits and risks of representing them all in the same matter if a conflict of interest is found.

3.6: An accredited representative shall carry through to conclusion all matters undertaken for a client, or promptly inform the client if one is unable to do so. An accredited representative shall follow all regulations governing withdrawal from cases and shall clearly communicate to the client when the representation has been terminated.

3.7: An accredited representative shall withdraw from a matter in the event of loss of accreditation, loss of agency staff position, or the accredited representative's agency loses its recognition. If the aforementioned events occur, the accredited representative has a duty to transfer the matter to another accredited representative inside the agency or refer the client to another accredited agency or attorney who is competent to handle the case.

3.8: Upon termination of representation, an accredited representative shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees that have not been earned.

CANON 4 -

The accredited representative shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship.

4.1: An accredited representative shall not violate any statute currently in effect controlling privileged communications.

4.2: An accredited representative shall not use confidential information to the disadvantage of the client, nor to the advantage of the accredited representative or of a third person.

4.3: An accredited representative may reveal confidential information only after full disclosure and with the client's consent; or when required by law or court order; or, when necessary to prevent the client from committing an act which could result in death or serious bodily harm.

4.5: An accredited representative shall not engage in any indiscreet communications concerning clients.

CANON 5 -

The accredited representative shall maintain a high standard of professional conduct.

5.1: An accredited representative shall use that title in all business and professional communications to avoid misunderstandings and misconceptions about the accredited representative's status, role and responsibilities. In communications, an accredited representative shall not make a statement that is likely to create an unjustified expectation about results the accredited representative can achieve, or state or imply that the accredited representative can achieve results by means that violate any laws or regulations.

5.2: An accredited representative shall maintain good moral character and refrain from all falsehood and fraud while carrying out professional duties.

5.3: An accredited representative shall not knowingly make a false statement of material fact or law to the BIA, INS, or EOIR, or fail to disclose a material fact to the BIA, INS, or EOIR when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, nor may the accredited representative offer evidence that he or she knows to be false.

5.4: An accredited representative shall refrain from engaging in any conduct that offends the dignity and decorum of proceedings before the INS and all adjudicatory bodies and shall be respectful of all rules and procedures.

5.5: An accredited representative shall only represent clients in the forums for which he or she is authorized by virtue of the BIA accreditation.²

5.6: An accredited representative shall not engage in any *ex parte* communications -- that is, communications to a judge without notice to the opposing party -- in an attempt to exert undue influence or to obtain advantage for the benefit of only one's own client.

5.7: An accredited representative shall not make an application for benefits, unless there is a basis for doing so that is not frivolous -- that is, there is some argument that the applicant is qualified for the relief based on the law and on the facts. An accredited representative for the subject of a proceeding before the immigration court may nevertheless defend the client so as to require the government to establish every required element of the

² Accredited representatives are only authorized to represent people within the INS and the EOIR, not in judicial courts. Furthermore, representatives may be either *fully accredited* -- meaning that they can represent clients before both the INS and the EOIR -- or *partially accredited*, and can only represent clients in proceedings before the INS. See 8 CFR § 292.2(d).

case.

5.8: Accredited representatives who have direct supervisory authority over other fully or partially accredited and nonaccredited staff members shall make reasonable efforts to ensure that the staff person's conduct is compatible with the professional obligations of the accredited representative.

5.9: An accredited representative shall make reasonable efforts to expedite cases consistent with the interests of the client.

5.10: An accredited representative shall be scrupulous, thorough and honest in the identification and holding of any funds or other assets of a client and shall provide accurate accountings as appropriate.

5.11: An accredited representative may only undertake representation of a client with the permission of the BIA-recognized, nonprofit agency which employs him or her.

CANON 6 -

The accredited representative shall actively maintain the integrity of the profession.

6.1: An applicant for accreditation, or an accredited representative in connection with an accreditation application, or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact or fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from the BIA or other admissions or disciplinary authority.

6.2: An accredited representative has a duty to report to the proper authority any action of another legal professional which clearly demonstrates fraud, deceit, dishonesty, or misrepresentation in their representation of a case.

Prepared by the Immigrant Legal Resource Center, San Francisco, 1996

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