

# Ethics in Family Based Immigration Law: Remaining True to Your Clients While Upholding Your Ethical Duties

Presented by

Jaqueline Watson, Walker Gates  
Vela, Austin

Kate Lincoln-Goldfinch, Lincoln  
Goldfinch Law, Austin & Waco

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# Sources

- Texas Disciplinary Rules of Professional Conduct (TR)
- ABA Model Rules
- 8 CFR 1003.101 to 1003.109.; 8 CFR § 292.3  
(authority to sanction, prohibited conduct).
- Immigration Court Practice Manual.

# Zealous Advocacy

- Preamble to TR:
  - As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system
  - In all professional functions, a lawyer should zealously pursue clients' interests within the bounds of the law. In doing so, a lawyer should be competent, prompt and diligent.

## EOIR rules

- 8 CFR 1003.102: “Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.”

# Meritorious Claims and Contentions, Rule 3.01 Commentary

- 1. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure.

# Candor to the Tribunal, Rule 3.03

- Lawyer shall not knowingly
  - (1) make a false statement of material fact or law to a tribunal
- “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

## 8 C.F.R. §1003.102

- (c) Knowingly or **with reckless disregard** makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence

## INA § 274C

Prohibits use of any false (altered, forged, etc.) document or helping another use a document that is “falsely made” where lawyer has knowledge or acts in **reckless disregard** of fact that document is false

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## INA § 274C

**Falsely make** means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

## Candor to the Court, Rule. 3.03

(a) A lawyer shall not knowingly:

(5) offer or use evidence that the lawyer knows to be false.

- “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

## Commentary to Rule 3.03

Lawyer may refuse to offer evidence that lawyer reasonably believes is untrustworthy, even if lawyer does not know that evidence is false. Discretion should be exercised... in order not to impair legitimate interests of client.

## Commentary to Rule 3.03

- Where client wishes to have suspect evidence introduced, generally lawyer should do so and allow finder of fact to assess its probative value.
- Lawyer's obligations [regarding candor] not triggered by introduction of testimony/other evidence that is believed by lawyer to be false but not known to be so.

# Scope of Representation, Rule 1.02

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

## Commentary to Rule 1.02

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. [...] There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

# Advisor, Rule 2.01

## **Duty to** render candid advice

- Comment 1: A client is entitled to straightforward advice expressing the lawyer's honest assessment.... However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

# Fairness in Adjudicatory Proceedings, Rule 3.04

A lawyer shall not: [...] (b) falsify evidence, counsel or assist a witness to testify falsely....



## Commentary to Rule 3.01

A filing or assertion is frivolous if [...] the lawyer is unable either to make a good faith argument that the action taken is consistent with existing law or that it may be supported by a good faith argument for an extension, modification or reversal of existing law.

## Commentary to Rule 3.01

Neither is it frivolous even though the lawyer believes that the client's position ultimately may not prevail.

## 8 C.F.R. § 1003.102(j)(i)

- Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal.

# State Bar of Texas

- [https://www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/Toll Free Ethics Helpline for Lawyers/default.htm](https://www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/TollFreeEthicsHelplineforLawyers/default.htm)
- [https://www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/Professional Ethics Committee Opinions/default.htm](https://www.texasbar.com/Content/NavigationMenu/ForLawyers/GrievanceandEthics/ProfessionalEthicsCommitteeOpinions/default.htm)

# RESOURCES

**ABA website ethics page:**

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html).

**EOIR website** lists practitioners who have been disciplined under DHS regs, penalties (suspensions to expulsions) without cite to reason therefore.

# RESOURCES

## AILA Ethics Resources

<https://www.aila.org/practice/ethics>

- Ethics Compendium
- Ethics Reference Guide by State
- Multi-Jurisdictional Practice of Law
- Ethics Resources

# RESOURCES

AILA Ethics Resources – Free to Members:

- *Bite-Sized Ethics: Final Orders, Enforcement Priorities, and Moving to Evade Arrest*, (4/26/2017), AILA Doc. No. 17042632
- *Bite-Sized Ethics: Advising Clients on DACA Given its Uncertain Future*, (10/9/2018), AILA Doc. No. 18100971
- *Ethical Questions in Representing Client with Administratively Closed Removal Cases*, (10/1/2018), AILA Doc. No. 18100133

# RESOURCES

## AILA Ethics Resources – Free to Members:

- *An Attorney’s Ethical and Legal Obligations to Pereira-Affected Clients*, (9/18/2018), AILA Doc. No. 18091831
- *Avoiding Disciplinary Action for Requesting Multiple Continuances in Immigration Court*, (5/3/2018), AILA Doc. No. 18050332
- Cyrus Mehta, “Withdrawal of Representation in Immigration Practice,” [AILA InfoNet Doc. No. 12112043 (updated 4/3/18)]