

Young Lawyers learn the ABCs of representing non-U.S. citizens

By Cailin Brown

Lawyers working with non-U.S. citizens who run into criminal trouble should either counsel clients to get help from an immigration lawyer or seek advice on immigration law themselves.

When a non-citizen first retains criminal counsel, he must be notified that consulting with immigration specialists is a necessity, said Douglas M. Reda of Woodbury (Law Office of Douglas M. Reda).

Reda spoke about defending immigrants at the Young Lawyers Section Annual Meeting program in January. In addition to addressing aspects of representing non-U.S. citizens in criminal and immigration cases, the program covered employment, labor disputes and civil courts.

"Guilty pleas in criminal justice courts have consequences for immigration status," said Reda, who also teaches at St. John's University School of Law. "A plea might get someone deported. If you didn't talk to immigration lawyers, you might not get the disposition you need. That could obviate all else that might come after."

In criminal court, an immigration lawyer can help clarify a situation during plea bargains with the prosecutor, he said.

"It's my experience that you put



Immigration ABCs—Allen E. Kaye shows just one form lawyers must file during a primer on the complexities of immigration law. [Photo Chris Leary]

right on the record what you have told your client: what the ramifications are, and what basis you have for your opinion," said Reda. "That way, the client is protected and knows in open court the ramifications."

Changing rules

Before *Padilla v. Kentucky*, immigration consequences were often considered collateral to a disposition. Criminal pleas are no longer considered inconsequential, Reda emphasized.

Historically, the laws protected lawyers who gave no advice, but not those who gave the wrong advice, Reda said.

Now, if it appears that a client will be deported because of a plea, the lawyer must be clear about that consequence. "Before *Padilla*, you could say, 'I think you might get deported.'"

Recently, an immigrant called Reda to say he was being deported 22 years after he pleaded guilty to an attempted burglary charge. He was a teenager at the time, and when he took the plea it was not a deportable offense. While he was born in Poland, he had lived in the U.S. since age 1.

Reda reviewed the minutes of the sentencing, as well as the court jacket. The minutes reflected that Legal Aid had not advised the client of immigration consequences in connection with the original plea.

As a result, Reda withdrew the original guilty plea and the client was sentenced to 10 months with youthful offender status. The entire criminal disposition of the case was changed and his client was not deported.

At a time when immigration reform is in the national conversation, immigrants need competent representation, said program chair Alena Shautsova of Woodbury (Anthony J. Colleuori & Associates PLLC).

Practicing immigration law means dealing with many governmental agencies, said Allen Kaye of New York (Office of Allen E. Kaye, P.C.).

Kaye presented the ABCs of immigration law, literally spelling out each provision provided under immigration law.

Lawyers must be familiar with the government agencies involved in immigration, and with the outlets where visas are issued. "The immigration service has local district offices all over the country," Kaye noted.

While a temporary visa may have been issued, Kaye said the presumption is that an individual is really coming into the country permanently. At the airport, an individual usually has about 30 seconds to prove that he is qualified to enter the country. Otherwise, he may be subjected to a second check at the airport. Even if he has a letter saying he will have a job when he gets there, he may be turned away.

"They can be summarily excluded right at the airport," Kaye said, and then would go through removal proceedings.

Anthony J. Colleuori of Melville (Anthony J. Colleuori & Associates PLLC) said it is important that lawyers stay in touch with their immigrant clients. "They move around a lot. Use Facebook and other social networking. They are sending you other clients," he said. ♦

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