



## Tip of the Month October 2015

### Avoiding Collateral Damage when Assisting Non-Citizens

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A study conducted by the [Pew Research Center](#) shows that there are approximately 41.3 million immigrants living in the United States as of 2013. Approximately 11.2 million are reported to be undocumented. Documented or not, the reality of our world is that non-citizens are a large part of the U.S. population. And, because of their non-citizen statuses, contact with an attorney about a legal matter may require a different approach. In certain situations it can even be considered malpractice to fail to adequately inform a client about the potential immigration implications they may face.

Sometimes, it's easy to know that a client is a non-citizen and whether that may have an impact on the legal advice you give. But, what if you don't know or can't tell? How do you approach the subject? And, why does it matter? This Tip of the Month will provide some basic guidance on the subject. For more information, we invite you to join us for an informative CLE called "Working with Undocumented Clients." Details about the CLE are located at the end of this tip.

#### Asking the Right Questions

Below are some key red flag areas that you may need to identify in order to provide competent representation to a non-citizen, make necessary referrals, and/or avoid malpractice:

- **Red Flag: Is my client a non-citizen?**

Identifying whether your client is a citizen or not, and what immigration status s/he may have can be important. First, attorneys who practice in civil law areas such as criminal or family law may need to consider their client's immigration status when providing advice and service, and tailor legal advice to include information specific to the client's situation. Second, knowing what questions to ask may also help you identify whether your non-citizen client may be eligible for a temporary or permanent immigration benefit. Third, some "non-citizens" may be citizens without knowing it and this may help them if they have certain legal problems. For example, was s/he the victim of a crime (U-Visa); does s/he have an abusive US citizen or Lawful Permanent Resident spouse (VAWA); did s/he arrive prior to age 16 and graduate from high school or is in school (DACA); does s/he fear return to a home country (Asylum); does s/he have parents or grandparents who are U.S. citizens (acquired citizenship); is s/he an unaccompanied minor (SJIP); is s/he from a country designated for protected status (TPS)?

- What should I do? Ask your client whether s/he was born in the United States, and thus a U.S. citizen. If not, ask them if they are a citizen through naturalization. This will tell you that they are foreign-born, but now a U.S. citizen. If not a citizen, ask them if they have a status. If they say yes, ask them what status they have, and if in doubt, ask to see any immigration documents or paperwork they have so that you may determine their status. When in doubt, seek help from an immigration attorney, and don't forget to refer your client for advice and/or service with their immigration case.

- **Red Flag: Does my non-citizen client have a criminal history?**

You may need to know your client's criminal history. Certain crimes, even misdemeanors, can have a negative impact on a non-citizen that run the gamut from losing their current legal status to being ineligible for immigration benefits now or in the future and/or being detained and removed from the U.S. Obtaining expungements for non-citizens may harm and not help them in an immigration case. Criminal defense lawyers need to advise all non-citizen clients about the impact admissions or convictions, etc., have for non-citizens. Family law attorneys need to know that violating OFP's or domestic violence related crimes may result in deportation and separate families.

What do I do? Ask about criminal history. Make sure that you know how it intersects your particular area of law and whether you should refer your client for further immigration advice.

- **Red Flag: What is my client's complete legal name?**

You want to make sure that you client is using their legal name on official forms and documents. When recording client's names on forms, make sure you are working with the client's complete legal name. Some immigrant clients don't realize that they changed their name when they got married or that their legal name is what is on their birth certificate, not a nickname they've used all their lives. Some immigrants have two last names, which are not hyphenated. Getting the name right on forms helps to avoid problems in the future in obtaining official documents, applying for an immigration benefit, or proving a person's identity.

What do I do? Check the spelling, the order of the last names, and any middle names. You may want to ask to see the client's original birth certificate, marriage certificate, or other official identification document such as a passport from their country of origin or a "Matricula Consular," which is an official identification document issued by a consulate to nationals of a given country.

### **Practice Tips:**

- ❖ Consider immigration implications in civil and criminal cases. Only a US citizen cannot be deported.
- ❖ If you handle criminal matters, get to know *Padilla*,<sup>1</sup> or an attorney that specializes in post-conviction relief.
- ❖ Make friends with a reputable immigration attorney. Seeking advisory opinions on the immigration implications that your client may face can mean the difference between staying in the USA and facing removal.
- ❖ Make sure to accurately answer all questions related to citizenship on VLN data sheets and internal procedures.
- ❖ Join us on **Wednesday, October 28, 2015 from 12 noon – 2:00 pm** at the HCBA for a more detailed conversation about working with undocumented clients. Please register [here](#).
- ❖ When in doubt, feel free to contact Gabriela Brunner or Colleen Beebe at VLN for guidance. We can be reached at [Gabriela@vlmn.org](mailto:Gabriela@vlmn.org) and [Colleen@vlmn.org](mailto:Colleen@vlmn.org).

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<sup>1</sup> <https://www.law.cornell.edu/supct/html/08-651.ZO.html>

This is not an exhaustive list of issues to consider when working with non-citizen clients. It is meant to be a quick introduction to make you aware that working with non-citizen clients in civil and criminal matters can have immigration implications.