



Immigration Program  
Management in Uncertain Times:

Considerations Before  
Deciding to Downsize  
or Close an Immigration  
Legal Services Program





# Introduction

It is critical that an organization's leadership understands that there are legal, ethical, reputational, and practical ramifications of hasty downsizing or program closure. While Board members and leaders of organizations that have been affected by dramatic funding cuts have fiduciary responsibilities to maintaining the financial health of the organization, they must balance these with their equally important legal, professional, and ethical responsibilities to clients.

Organizations should use the following guidelines to make an informed, purposeful, mission-driven decision.

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**Additional information:** For helpful information on revenue generation, please consult CLINIC's practice advisory, [Immigration Program Management in Uncertain Times: Responding to the Trump Administration's Funding Challenges](#).

# Introduction

In these challenging and uncertain times, organizational and program leadership are having to make very difficult decisions about the future of their immigration programs that may entail service and staff reduction or to shutter an entire program all together. However, it's important that programs plan and respond accordingly and not take any drastic measures that negatively affect the viability of the ILS program and its clients.

While Board members and leaders of organizations that have been affected by dramatic funding cuts have fiduciary responsibilities to maintain the financial health of the organization, they must balance these with their equally important legal, professional, and ethical responsibilities to clients.

Decisions to downsize or close should be made only after considering all alternatives,<sup>1</sup> the organization's legal, ethical, and professional responsibilities,<sup>2</sup> and how to mitigate impact to clients. When presented with funding challenges, it may at first blush appear that the simplest option is to downsize or close a program. However, it is critical that an organization's leadership understand that there are legal and ethical ramifications of hasty downsizing or program closure.<sup>3</sup> Indeed, the ABA Ethics Committee has opined that legal service providers facing funding cuts must take three steps "in order to adequately prepare for a significant reduction in the availability of legal services[.]" including taking "[e]very reasonable effort ... to arrange alternate funding, or, failing that, for substitution of lawyers to handle pending matters."<sup>4</sup>

Leaders at organizations that have immigration programs that are part of a larger operation will need to communicate and collaborate with leaders of the immigration program to understand the legal, professional, and ethical obligations owed to clients. Organizations should use the following guidelines to make an informed, purposeful, mission-driven decision.

## I. Consider the Risks and Responsibilities

Before leadership can decide to downsize or close a program, they must consider the legal, professional, and ethical obligations owed to existing clients. **Program closure raises potential liability and discipline for both the organization as a whole and for its individual practitioners.** Leadership must ensure that any measures taken to downsize or close a program do not jeopardize client matters, practitioners' professional responsibilities, or the organization's legal responsibilities.

### a. Legal Responsibilities and Liability

Organizations and individual practitioners share in the responsibility to assure that client matters transition smoothly during a downsizing or program closure. **The initiation of the practitioner-client relationship, typically marked by signing a contract or client services agreement, creates legal responsibilities that expose both the practitioner and the organization to legal liability in the event the services are not delivered according to the agreement.** Additionally, the initiation of the relationship subjects both the practitioner and the organization to ethical responsibilities under the relevant codes of professional responsibility.<sup>5</sup> Breaches of duty owed under the rules of professional responsibility create the basis for malpractice claims against the practitioner and organization. **The organization's leaders must be cognizant that closing or downsizing a program means terminating**

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1 As outlined in our resource on [Responding to the Trump Administration's Funding Challenges](#), programs should get creative with revenue generation through exploring various opportunities.

2 This publication addresses professional responsibility considerations solely based on reference to the ABA Model Rules of Professional Conduct (Model Rules) and the federal regulations governing the professional conduct for immigration practitioners. CLINIC cannot provide advice on any specific state's ethics rules. We strongly encourage research and analysis into any applicable state rules of professional conduct, as these rules sometimes vary from the Model Rules. While Department of Justice Accredited Representatives are not bound by rules of professional conduct, CLINIC encourages their adherence to the rules applicable in their state as a matter of best practice. The federal regulations (including grounds for discipline) cited in this ethics primer apply to all immigration practitioners, including Accredited Representatives. See 8 CFR §§ 1003.101(b) (persons subject to sanctions) and 1003.102 (grounds for sanctions).

3 Of particular note, attorney leadership and Board members should inquire into their state's code of professional responsibility to understand the implications of a hasty closure or downsizing on their own licenses. Many states impute the professional responsibility of a lawyer within a firm or association to all other lawyers in the firm or association, regardless of the lawyer's direct involvement with a particular client. See, for example: California Formal Opinion No. 2014-190.

4 ABA Formal Opinion 399 (1996). See also [American Bar Association. Ethical Duties in Immigration Cases after Funding Loss \(2025\)](#).

5 ABA Model Rules (Model Rules) of Professional Conduct. See also ABA Informal Opinion 1428 (1979), stating that a legal services office should be considered as a firm retained by the client, and that the primary responsibility for handling the caseload of a departing legal services lawyer devolves upon the office as a whole, rather than upon a lawyer who leaves. See also ABA Formal Opinion 347 (1981) and ABA Formal Opinion 399 (1996).



**representation agreements that carry legal and ethical obligations and must avoid hastily ending services without consideration to these consequences.**

ABA Formal Opinion 347 (1981), reiterated by ABA Formal Opinion 399 (1996), lays out “three steps legal services lawyers must take in order to adequately prepare for a significant reduction in the availability of legal services:

Notice of the risk of disrupted services must immediately be given to existing clients.

A stringent system of priorities must be established for handling pending matters and accepting new clients.

Every reasonable effort should be made to arrange alternate funding, or, failing that, for substitution of lawyers to handle pending matters.”

It is likely that, at a minimum, complying with these obligations will require either: (1) keeping at least a small staff who can continue services to current clients; or (2) providing sufficient time between deciding to close and effectuating the closure to arrange for withdrawal and preferably alternate representation for current clients.

***i. Is Withdrawal Allowed?***

If a program is closing or downsizing and will not be able to carry out representation according to the original agreement, the termination of representation may create a risk of liability and discipline. All terminations must be done in accordance with the law and rules of professional responsibility to protect the individual practitioner and the organization. Furthermore, withdrawal may not be permitted if it is not allowed under the terms of the client agreement or under the rules of professional conduct. Most importantly, termination is generally not permitted if it will unduly prejudice the client.

- **Does the Client Agreement Allow Withdrawal?** As a primary consideration, the organization must assess each client services agreement, which establishes the parameters of the representation. This legally binding contract may contain previously agreed-upon provisions for the organization to be able to lawfully terminate the relationship. Before relying on such provisions, however, the organization should consult with qualified counsel to ensure that either the provisions are enforceable or, in the absence of such provisions, to determine whether there are legal grounds to terminate the contract in light of the circumstances. In either case, the organization must also coordinate a termination process that aligns with the contract provisions, as well as applicable laws and rules of professional conduct. Often, client services agreements contain narrow grounds for termination, and the organization must first understand whether unexpected closure or downsizing of a program are allowable bases for termination by the organization.
- **Do the Rules of Professional Conduct Allow Withdrawal?** Termination may also be impossible under the applicable rules of professional conduct, which require that practitioners carry matters undertaken through to conclusion unless an exception applies.<sup>6</sup> Withdrawal from representation also generally cannot unduly prejudice the client and must be “accomplished without material adverse effect on the interests of the client.”<sup>7</sup> While ABA Formal Opinion 347 (1981), reiterated by ABA Formal Opinion 399 (1996), states that “the Model Code should be construed to permit liberal withdrawal from pending matters when a legal services lawyer no longer receives a salary and the office is closed because of lost funding[,]” the Committee emphasizes that “each lawyer must have fulfilled the duties outlined above regarding preparation, notice to the clients the lawyer is representing, and exhaustion of possible remedies for finding other funding or substitute counsel.” Where such steps have not been taken, the Committee finds that the practitioner and organization may be compelled to continue providing representation, whether or not funding exists. The Committee notes that where an adjudicator denies a request to withdraw to avoid irreparable prejudice to the client, the practitioner and organization may be compelled to provide continued representation. Where withdrawal is not permitted, the organization and the practitioner have a continuing duty to provide competent and diligent representation.

***ii. Organizational and Practitioner Liability Upon Withdrawal***

Even if the practitioner-client relationship may be severed legally and according to the rules of professional responsibility, the organization and the practitioner must also work together to formally withdraw from each matter. This is necessary for two reasons: (1) to ensure that the client — not the practitioner/organization — receives communication regarding their legal matter; and (2) it is often legally required by courts and government agencies. Failure to do so could lead to malpractice liability.

Because the practitioner and the organization serve as the client’s agent for purposes of the representation, all communication regarding the legal matter is directed to them rather than the client. Without formal withdrawal, the practitioner and the organization may continue to receive important communications, including notices of deadlines. Failure to address these deadlines

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<sup>6</sup> Model Rules 1.3, comments 1 and 4.

<sup>7</sup> Model Rules 1.6.

and communications can have devastating effects on a client's case, including denials of benefits and orders of removal for failure to respond. Such failures would amount to malpractice and expose the individual and the organization to liability. Even conduct or inaction much less serious than failing to address communications from government agencies can amount to a potential disciplinary breach of the rules of professional conduct that may give rise to a malpractice action. Indeed, ABA Formal Opinion 347 (1981), reiterated by ABA Formal Opinion 399 (1996), emphasizes the need for formal withdrawal from matters and that where withdrawal requests are not granted, representation must continue even absent funding.

Finally, organizations must understand that practitioners risk losing their professional credentials if they fail to follow through on the representation they undertook. Ultimately, the practitioners left at the organization, including practitioners on the board, and the organization as a whole bear responsibility to provide diligent and competent representation to remaining clients.<sup>8</sup> Where withdrawal is not permitted, even practitioners no longer employed by the organization may be required to continue representation.<sup>9</sup> As such, organizations that too hastily close or downsize may inadvertently cause practitioners to continue to carry out their job duties even after being terminated from their positions. However, such continuation of representation presents logistical, ethical, and practical concerns.

To illustrate the impacts of a rushed program closure, suppose an organization terminates the employment of a practitioner who has 200 active clients. Now unemployed, the practitioner has no access to the organization's mail and electronic systems where they receive all of the notices relating to their cases. Many cases would likely have imminent filing deadlines or deadlines that may emerge subsequently. If the organization has not arranged for substitution of counsel on the active cases or filed requests and been granted permission to withdraw, the practitioner is still responsible for delivering diligent representation, including complying with all relevant deadlines. Additionally, the practitioner's duty of communication requires them to keep the client reasonably informed about the status of the matter. Without the benefit of the organization's malpractice insurance, this could require a practitioner to obtain their own malpractice insurance to cover their continued, unpaid obligations or leave them vulnerable to liability not covered by insurance.

The abrupt termination obstructs the practitioner's ability to either request and be granted permission to withdraw or continue representation in compliance with their professional obligations under the state rules of professional conduct and the regulations for professional conduct governing immigration practitioners. The practitioner and the organization can be held liable for damages that arise as a result of these inevitable breaches. Further, this creates employment law liability for the organization, as it requires an attorney to continue working unpaid.

Where downsizing occurs rather than closure, there are still ethical duties and risks to consider. ABA Formal Opinion 347 (1981) requires remaining lawyers to ensure they do not absorb a vast caseload which prohibits them from providing competent and diligent representation to clients. As such, they may be required to withdraw from a sufficient number of cases to ensure they are able to meet ethical duties for remaining cases.

#### **b. Department of Justice (DOJ) Recognition and Accreditation Considerations**

Only staff and volunteers at a DOJ-Recognized Organization can be Accredited Representatives. It can take up to a year or more to hire, train, and provide hands-on experience to a legal advocate wanting to pursue Accreditation. In addition, it can take several months for the Department of Justice to approve an application for staff Accreditation. For these reasons, it is especially important to have a well-thought-out succession plan whenever changes need to be made and to consider the investment that your organization has made in building a team of legal practitioners.

#### **c. Reputation Considerations**

An organization's reputation is directly connected to its success. What sets an organization apart is how it is perceived by clients, the local community, funders, and partners. Several factors can impact an organization's reputation, including actions or inactions by staff, failure to uphold ethical obligations or protect client information, fraud and financial mismanagement, and poor quality of services. What happens when an organization is faced with a financial crisis?

**Whenever a nonprofit faces financial challenges and considers downsizing, leadership should explore every option before making any long-term and possibly irreversible decisions. Building a strong, self-sustaining organization takes years, but one decision can change the public's perception overnight.**

Large scale downsizing or shutting down portions of an immigration legal services program can damage an organization's outward-facing image with the local community, clients, partners, stakeholders, and state and local funders. Funders are motivated and influenced by an organization's stability and reputation, and any sign of uncertainty may deter donors, partners,

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<sup>8</sup> See ABA Formal Opinion 347 (1981) and ABA Formal Opinion 399 (1996).

<sup>9</sup> *Id.*

and volunteers from further involvement. This would be a great loss, given how long it took the organization to cultivate those relationships. One way to mitigate reputational harm when scaling back services or shutting down is to engage in transparent and authentic communication about the challenges your organization is facing and the efforts and steps being taken to address them. This is discussed in detail in [section V](#).

If an organization's leadership makes a decision that could be detrimental to the organization's reputation, programs are encouraged to have a crisis communication strategy and plan in place. A well-developed plan should consider:

- Target audiences.
- Key messaging.
- Whether the crisis was anticipated or unanticipated.
- Your short- and long-term strategy, goals, and objectives.

An organization can proactively work on managing and protecting its reputation by doing the following:

1. Engaging consistently with the community.
2. Developing a process for resolving client grievances promptly.
3. Creating and fostering strong relationships with partners and funders.
4. Regularly evaluating its processes and service delivery model for client satisfaction.
5. Sharing program successes.
6. Demonstrating its commitment to transparent and responsible financial management.
7. Fostering a culture of wellness and treating staff and clients with dignity, respect, and appreciation.

By prioritizing transparency, ethical decision-making, and strong community relationships, organizations can safeguard their reputation – even during financial hardships.

## II. Keep the Mission at The Center

In addition to our ethical duties as professionals, we should consider our ethical responsibilities as people. We can look to our organizational mission statements to remind us of the values that undergird our work. While each immigration legal services program has its own unique mission and values, all have a common universal dedication to defending human rights and ensuring that immigrants have the opportunity to create safe, stable, and meaningful lives for themselves. We care deeply and fully about the quality of life of immigrants and all people, and we work hard towards a goal where everyone can live dignified lives.

In these times where the government is actively attacking the dignity of immigrants, adhering to this mission is more important than ever. This current administration is purposefully making chaotic and frequent changes, often without lawful grounding, to overwhelm us into hopelessness and inaction. When humans feel overwhelmed, they may find themselves incapable of taking steps to address a problem, even when they have the tools and resources at hand to do it. But as Bryan Stevenson says, “Injustice prevails when hopelessness persists.”

While the mission may have to be effectuated differently depending on circumstances, commitment to the mission is what all stakeholders share. Organizational leaders should strive to work toward solutions that uphold their mission. Even when program closure is unavoidable, it is critical to develop a plan that does so in the best interests of the mission.

## III. Mitigate Harm

Clients and staff are both at risk of being harmed when programs downsize or close. While tough decisions will have to be made, leadership should keep the ideal of mitigating harm as a cornerstone in the decision-making process.

Where possible, services should continue uninterrupted. Where services cannot continue in the same way, the program should seek to mitigate the impact of interruptions and changes for clients, staff, and other stakeholders. Where the plan must involve program closure, adherence to legal, professional, and ethical responsibilities (discussed in [section I.a](#)), as well as appropriate communication with stakeholders (discussed in the next section) are critical to mitigate harm.

## IV. Brainstorm With Stakeholders

Leaders must actively seek stakeholder feedback to inform their decisions. Those with on-the-ground experience who will feel the brunt of the impact of decisions can provide information and raise considerations that are otherwise likely to be overlooked. Leaders at organizations that have immigration programs that are part of a larger operation will need to communicate and



collaborate with leaders of the immigration program to understand the legal, professional, and ethical obligations owed to clients. Decision makers should provide multiple and meaningful opportunities for stakeholders, especially staff, to discuss how the organization is preparing for the challenges they are facing. These should be conversations where information and ideas are shared between parties. Leaders should seek from stakeholders their insight as to how the program may be impacted by changes and involve them in brainstorming solutions. It's important to acknowledge unknowns and discuss planning for various possible situations.

Leaders should be prepared to use feedback from staff and other stakeholders to make well-thought-out and informed decisions. When we seek information from a variety of people, it is inevitable that we will get different opinions. Furthermore, while staff and other stakeholders have information and experience that leaders may not, it is equally true that leaders may have their own information and experience that staff and other stakeholders may not. The job of leaders is to gather all the available information and then make decisions on the best path forward.

## **V. Communicate Transparently, Deliberately, Timely, and Consistently**

### **a. Transparently**

Clear and consistent communication is key to building trust, obtaining necessary details to inform decision-making, and mitigating harm. We often feel that we need to withhold information to protect ourselves or others. But lack of transparency causes fear and mistrust; it also deprives those impacted of the ability to make informed decisions. Staff, clients, and other stakeholders will worry about issues they learn about via news or social media that will directly impact them, whether that is funding freezes or changes in immigration laws or policies. They will only worry more if they are kept in the dark about how it affects them as well as the organization as a whole.

Organizational decisions must be made and shared in a way that builds and maintains trust with stakeholders: staff, clients, donors, community partners, and others with whom you interact in your regular course of business. As we all grapple with the consistent trauma inflicted by the policies of the current administration, it is more important than ever that we take a trauma-informed approach to our work. This is important not just for the benefit of our clients but for all our stakeholders. One of the most important tenets of trauma-informed care is trust and transparency.

It is imperative that leaders and decision-makers within an organization engage in appropriate transparency with affected stakeholders. Deception or a deliberate choice to withhold information for the purposes of “protecting” stakeholders only reinforces the very paternalistic and hierarchical structures that we seek to break down in the work we perform on behalf of our clients. It assumes that the holder of the knowledge knows what's best for another person. Sharing rather than withholding information promotes individual empowerment, voice, inclusion, and choice.

Provide information that has a high degree of certainty as early as possible. This gives stakeholders the chance to digest information. When people are blindsided, they often react defensively. This is human nature. At times, it may be required to provide information or implement changes in a short timeframe. Wherever possible, however, advance notice helps mitigate harm: giving stakeholders time to fully reflect, digest information, and understand necessary actions allows them to better respond.

### **b. Deliberately**

Transparent communication should still be deliberate. Leaders should engage in thoughtful transparency by sharing relevant and helpful information in a direct, clear, timely, and empathetic manner. Deliberate communication recognizes the humanity of yourself and your audience. Remember that you are all individuals with your own experiences and emotions. As you consider how to best frame information, let go of your assumptions and work to communicate genuinely and with appropriate vulnerability. This includes acknowledging the difficulty being faced by stakeholders and the plan for remedying or mitigating this difficulty.

Provide clear explanations that focus on facts and potential solutions where applicable. Avoid sugarcoating the situation or providing unnecessary details. After providing information, foster conversation, listen to concerns, and respond appropriately. If you are providing space for people to freely voice concerns but then fail to adequately respond, this causes more frustration than it solves. If you can't respond immediately, acknowledge that and let stakeholders know you will attempt to get them information as soon as possible or within a specific and clear timeline.

Acknowledge the potential emotional reactions from your stakeholders and give time for the recipients of the information to process it. While the information may also be upsetting to you, remember that over-expressing your emotions may rob the recipients of the ability to express their own emotional reaction; they may feel compelled to respond to your emotions rather than having space for their own emotional reaction.

### c. Timely

When information comes to the attention of leadership or decisions are made, this should be relayed to stakeholders in a timely manner, at an appropriate time, and through appropriate means. When leaders delay sharing information, it frustrates stakeholders who feel that the impact they are experiencing or the concerns they are expressing are being ignored, minimized, or undervalued. As noted above, it also creates distrust. How can stakeholders develop trust in leadership if delayed information makes them feel this way?

However, just as leaders must give stakeholders time to digest information, they must also give themselves that same opportunity to ensure that communication is deliberately conveyed. When we act before digesting information, we may cause unnecessary harm. Our first reaction to negative information may lead us to act rashly or defensively. Communication that seems reactionary rather than contemplated instills fear or panic. It is crucial to take the time to deliberately digest the information and consider the best way to communicate that information to stakeholders. Be cautious of sharing information in a way that unnecessarily indicates organizational instability.

### d. Consistently

As the situation unfolds, be sure to have continued communication with stakeholders.

Be sure that you remain consistent with the information you provide to different stakeholders. When stakeholders discover the inconsistency in information through their interactions, which are inevitable if you are not consistently communicating with the stakeholders, they are likely to be confused, frustrated and lose trust in the information they were provided, assuming that certain information is being purposefully withheld from certain groups.

Also, be consistent with how information is provided and who provides the information. Regular meetings are the best space to provide information, but specially called meetings may be necessary depending on the necessities of providing information timely. Meetings rather than emails are also the best way to share important information, as they allow the space for discussion and feedback described above. Relying on middle-managers to deliver information may cause inconsistency between the information that is conveyed to different stakeholders. It may also lead to mistrust if it is perceived that information is being purposefully withheld or warped by the “middlemen.”

## VI. Make the Decision

Making decisions is, of course, difficult. If the way forward was obvious, we would already be there! There will be no black-and-white answers. All decision making involves weighing and accommodating various factors. First, leaders must determine whether matters that appear to be in conflict actually are—things that may facially seem at odds might turn out to be congruent once we look deeper. But inevitably, there will be incompatible factors, and leaders will have to make calculated decisions that attempt to balance these conflicting considerations.

While contemplating the various factors is critical, don't become immobilized by the minutiae. Leaders must make decisions: strategic planning is a critical role of management. Difficult decisions must be made, even when — actually, especially when — there is no obvious “right” answer.

## VII. Extend Grace (to Yourself and Stakeholders)

In making difficult decisions, two things are inevitable: (1) leaders will not be able to please everyone; and (2) leaders will sometimes make the wrong decisions.

Regarding the first, it is important to make staff and stakeholders feel heard. Share the decision-making process and the factors that were considered transparently. Explain how stakeholder suggestions that couldn't be fully implemented were still used to inform the decision. Sharing the reasoning behind decisions lets staff know that their input was valued and used as much as possible.

Regarding the second, you must start by acknowledging to yourself that you are not infallible, nor should you be. You are making decisions with the information you have at hand. Hindsight is 20-20, and in the future, you may think it was obvious that you should have made a different decision. But so long as you have done what you can under the circumstances to make an informed and well-thought-out decision that balances conflicting priorities in a timely manner, you must give yourself grace if later developments indicate that a different decision may have been better.

While giving yourself grace, it is also important to acknowledge any errors you made to those impacted. It is an opportunity for all to learn and make more informed decisions next time. If you have built a relationship of trust and included stakeholders in the decision-making process, they will likely give you grace as well. But if they do not, it's important to understand what motivates their frustration; consider whether their negative reaction to you is an attempt to exert control in any way available to them in an otherwise powerless situation.

## Conclusion

Decisions made hastily in response to legally questionable actions taken by this administration are not only likely to violate professional, fiduciary, and personal ethical responsibilities, but also will assist the administration in achieving exactly what it hopes to: increased barriers for immigrants to access justice. Given the importance of sustaining immigration legal service programs in this political climate, as well as challenging the legality of the administration's attacks on federal contracts and grants, it is important for programs to avoid rushing to any decision that negatively impacts these programs or harms the clients. While difficult decisions may be required, organizational and program leaders must still examine all relevant considerations before deciding to downsize or close an immigration legal service program.



## Index: Steps to Take When Withdrawal Is Necessary

### I. Options for Continued or Alternative Representation

As noted above, the ABA Ethics Committee has opined that legal service providers facing funding cuts must take “[e]very reasonable effort ... to arrange alternate funding, or, failing that, for substitution of lawyers to handle pending matters.”<sup>10</sup> As such, the organization must facilitate continued representation as previously agreed or arrange for alternate representation in client matters with active contracts, especially absent grounds to lawfully and ethically terminate the contractual relationship (discussed in [section I.a.i](#)).

**Whichever method leadership chooses when downsizing or closing a program, ensuring that there are no gaps in services is paramount to avoiding liability.** Because of the gravity of the potential liability to the organization and to the individual practitioners when a legal matter is neglected or abandoned, and because there is very little chance that an organization could legally and ethically just terminate all active contracts, a careful and deliberate wind-down is crucial.

Some options include:

- **Redistribution:** For organizations downsizing the immigration legal services department, remaining practitioners within the program may be able to absorb additional cases from departing practitioners. If the program intends to redistribute existing cases to a smaller number of remaining practitioners, caseloads must be carefully examined and monitored to ensure that the practitioners can maintain their ethical duty to competently handle each matter.<sup>11</sup> Individual practitioners must self-assess their ability to competently and diligently handle their caseloads and advocate on their own behalf for reasonable caseloads.<sup>12</sup> In pursuing this option, organization leaders should be particularly cautious against overburdening practitioners, especially at a time when immigration law and policy are in such a state of flux that practitioners must spend extensive time toward staying updated. Overwhelmed practitioners with unreasonably high caseloads can easily fall short in carrying out their professionally required duties of competence, diligence, and communication with clients.<sup>13</sup> Mistakes and shortcomings related to high caseloads are some of the most common reasons for immigration practitioner discipline and malpractice.
- **Pro Bono Support:** If the program is closing entirely or there is insufficient capacity among the remaining practitioners to absorb additional existing cases, leadership may be able to recruit pro bono counsel to assist in handling the remaining cases. Ideally, leadership could facilitate a substitution of counsel and a mutual termination of the existing contract. If the program brings in pro bono support in the form of volunteers within the organization, leadership must ensure the pro bono practitioner has sufficient support, competence, and oversight to carry out the original client services agreement. Leaders should be cognizant that recruiting, hosting, and supporting volunteer practitioners requires a significant amount of time, expertise, and administrative work. Many programs that rely on pro bono support dedicate an entire position to the recruitment, training, and oversight of volunteer practitioners. If volunteers are inadequately prepared or supervised, the risk of liability may outweigh the benefit of the pro bono support.
- **Caseload Transfer:** In some scenarios, leadership may be able to identify another organization or private firm to take over existing matters. The organization or firm agreeing to take over a closing or downsizing organization's existing caseload must diligently screen for conflicts of interest that would prohibit the transfer of each matter. Additionally, the client must agree to the new firm or organization's representation.

### II. Formally Withdrawing Before Immigration Agencies

If the contract and the rules of professional responsibility allow (discussed in [section I.a.i](#)), the organization and the practitioner must work together to formally withdraw from each matter. **Notably, withdrawing from representation before immigration agencies has proven notoriously difficult due to the bureaucratic challenge of getting the agency to acknowledge the communication.** It is in the best interest of both the practitioner and the organization to secure proof that the communications were acknowledged before assuming the withdrawal was effective.

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10 ABA Formal Opinion 399 (1996)

11 Model Rules 1.1.

12 Model Rules 1.3, comment 2, states: “A lawyer’s work load must be controlled so that each matter can be handled competently.” Ethical caseloads are outside the scope of this advisory, but practitioners with heavy existing caseloads may not be able to absorb additional cases without risk of competence or diligence breaches. To consult with CLINIC attorneys regarding ethical caseloads, Affiliates may submit an inquiry to ASF.

13 Model Rules 1.1, 1.3, and 1.4.

Each immigration agency has its own processes for withdrawal of representation, explained further below:

### USCIS

The U.S. Citizenship and Immigration Services (USCIS) advises practitioners to send a letter to the USCIS office where the matter is pending. It will be important to include a note regarding whether the client intends to continue their case either: (1) with new representation, ideally enclosing the new G-28, Notice of Entry of Appearance (if so, USCIS will communicate with the new representative); or (2) without any legal representation (if so, USCIS will communicate only with the client and no longer with the agency or with you). If the practitioner has filed the benefit application electronically, withdrawal can be accomplished simply by making a request through MyUSCIS.

### AAO

If the practitioner has filed an appeal with the Administrative Appeals Office (AAO) on behalf of a client, and it is pending, it is important to refer to the AAO Practice Manual. Section 2.8 provides, “withdrawal of representation requests must be in writing and sent by mail or fax. No special form is required. The written request should identify the appellant and the representative being released. The withdrawal request should also identify the immigration benefit request by Receipt Number and any related A-Number.”

### NVC

If the practitioner has cases awaiting visa availability with the National Visa Center (NVC), it is important the NVC receives a copy of your withdrawal letter as well. That way, the appropriate individual receives the notice of visa availability. If the client and their new representative do not receive this notice and respond within one year, there’s risk of termination of the petition and the client would lose the benefits of that petition, such as their priority date. Be sure the practitioner has advised the client of the same, in writing, and that they have documented this advisal in the client’s file in the case management system (and/or your physical file if applicable).

### EOIR

Withdrawing from representation in matters before the Executive office for Immigration Review (EOIR) requires approval of the immigration judge. Withdrawal of counsel can be requested by oral or written motion. The rules and procedure for moving to withdraw are found in the Immigration Court Practice Manual Chapter 2.3(i)(2) (Withdrawal of Counsel). In some cases, the immigration judge may prefer that the respondent has alternate counsel before allowing the practitioner to withdraw representation. For information on the requirements of a Motion for Substitution, refer to Chapter 2.3(i)(1) of the Immigration Court Practice Manual (Substitution of Counsel).

## **III. Handling Fees, Records, and Client Property**

When representation is terminated before an agreed-upon service is completed, the organization cannot retain the entire advance payment or flat fee. **A program that is terminating representation must assess each matter to ensure that it is not improperly keeping unearned fees and must issue refunds as appropriate.**<sup>14</sup> Additionally, many states impose recordkeeping requirements for legal files, and every state requires some type of record maintenance relating to Interest on Lawyer Trust Account (IOLTA) accounts.<sup>15</sup> Even if the state does not mandate requirements for recordkeeping, the program should arrange for a file custodian pursuant to local ethical requirements. This is also true if the contract for legal services promised that the file would be maintained for a certain period.

## **IV. CLINIC Practice Advisory: Recommendations for Closing an Immigration Legal Program**

For more helpful information on the logistics of program closure, please consult CLINIC’s practice advisory, [Preliminary Recommendations for Closing an Immigration Legal Program](#).

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<sup>14</sup> Check your state’s rules regarding fees.

<sup>15</sup> Check your state’s rules regarding IOLTA recordkeeping requirements.