

Program Considerations for Providing Removal Defense

Most of the immigration benefits you file on behalf of your clients are with U.S. Citizenship and Immigration Services. On occasion individuals may need defense from removal in immigration court. If your organization is thinking of, or are already, providing removal defense, you will soon realize removal cases are highly complex, can quickly consume staff time, and can become resource draining for immigration programs. Yet, the work is very important in the immigrant community and affirming legal justice in our immigration court system. Advanced planning for its impact on staff and other program resources can mitigate unexpected surprises, potential liability issues, and staff burnout.

The following are suggestions for immigration programs to consider when planning for and providing removal defense representation.

Preliminary Assessment of Immigration Program's Capacity

Before your immigration program decides to handle removal defense cases, you may want to conduct a preliminary assessment of your staff resources and caseload. Some questions to consider are:

- What is the current caseload in your immigration program?
- Is the current caseload manageable for your staff? If it is not manageable, what changes can you make in your case selection and overall case management process?
- What are your current staff resources and how will removal defense work affect them? Will you dedicate a full-time staff to removal defense or will you split staff time between removal defense and other types of immigration benefits? Will you hire new staff or train existing staff on removal defense? These staffing decisions will depend on your agency's financial resources and staff interest, skills, and time.

If you decide to hire new and less-experienced staff, what qualifications do they need for this position? They should probably at a minimum possess immigration court experience. If you decide to re-train existing staff whether it is a staff attorney or partial accredited representative looking to obtain full accreditation, you should create a training plan that includes advocacy and court skills, writing motions and briefs, and experience observing master calendar and individual hearings in immigration court.

- What proportion of your program's caseload will be allocated to removal defense? This decision again will hinge on staff and financial resources. If you have a grant for removal defense, this analysis may be easier since it will be dictated by the

terms of the grant. However, if removal defense will be fee-for-service, then you may need to be more selective in which removal cases you accept considering the availability of your staff and your program's budget.

- After assessing your program's capacity, you will need to determine how much your immigration program will need to charge for removal defense services. Keep in mind that time is uncertain in most defense cases due to their complexity, especially when staff are less experienced. When determining a fee schedule structure, it is helpful to survey local nonprofit organizations and private attorneys and conduct a program cost analysis of how much a case might cost to the agency. Some state and local government agencies have started to fund removal defense work. You should check to see if this is the case in your state or locality.

Managing Your Staff Resources

Whether or not your immigration program decides to hire new staff or re-train existing staff on removal defense, program directors and managers need to ensure staff competency and compliance with immigration court processes and procedures. Below are some suggestions to consider:

- When developing your annual program budget, advocate for and build in staff training expenses for courses relevant to removal defense and other areas of immigration law.
- Consider developing a training plan with staff for the year. Attorneys may need to take legal trainings to fulfill their Continuing Legal Education requirements for their state bar license while full accredited representatives need trainings to renew their accreditation every three years.
- It is important that program directors and managers allow time for staff to participate in learning and networking opportunities with government agencies and other local immigration providers. ICE, local law enforcement, and private detention corporations sometimes conduct stakeholder relations meetings in the immigration court or detention facility. In addition, many local immigration courts have one or more pro bono liaison judges who serve as a point person to nonprofit immigration legal service agencies and private attorneys engaged in pro bono work. Many cities and counties also have working groups of immigration practitioners who focus on removal defense or certain niches within removal defense such as asylum.

These types of engagement activities are essential for programs to connect with local immigration attorneys and providers that practice in immigration court. They will be a good source of referral for cases you can't accept, as well as, possibly cover for your staff attorney or full accredited representatives during planned or

unplanned absences. We will discuss this in more detail in the section, “Maintaining Removal Defense Cases”.

- When appearing in the immigration court, all legal representatives need to be familiar with immigration court processes and procedures set forth by the Executive Office for Immigration Review (EOIR), Office of the Chief Immigration Judge. This information is published in the Immigration Court Practice Manual.¹ This manual can change periodically “in response to changes in law and policy”² so it is recommended legal representatives review this information prior to a master calendar or individual hearing. In the beginning of 2021, EOIR published a comprehensive policy manual which includes the OCIJ and BIA practice manuals. The EOIR policy manual is available here: <https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual>.
- Attorneys and full accredited representatives who plan to practice before the Immigration Court or Board of Immigration Appeals need to register with EOIR prior to the court appearance or submission of any court documents. The registration process “consists of an online registration and an identity validation. Both steps must be completed in order for an attorney or accredited representative to be registered before EOIR”³ and receive an EOIR identification number.

Revising Your Case Management Policies and Procedures

Managing Removal Defense Cases

Removal defense work is highly complex and involves multiple deadlines that often cannot be extended. It is important that your program has policies and procedures for receiving clients, handling client files, tracking deadlines, and a backup plan when there are planned or unplanned staff absences.

- What are your policies and procedures for front-line staff when they receive clients who need removal defense services? If front-line staff conducts the preliminary screening and intake, ensure they are trained with the intake process. They should ask only the information contained on the screening or intake form and to refer the clients to the removal defense attorney or full accredited representative for a complete screening and consultation.

¹ U.S. Department of Justice, Executive Office for Immigration Review, Office of Chief Immigration Judge, *Immigration Court Practice Manual*, at <https://www.justice.gov/sites/default/files/pages/attachments/2017/11/02/practicemanual.pdf>

² *Id.*

³ For more information refer to “Frequently Asked Questions” at <https://www.justice.gov/eoir/i-cubed-faqs/download> and “General Instructions” at <https://www.justice.gov/sites/default/files/eoir/legacy/2013/05/14/instructions-eRegistry.pdf>

- Removal defense attorneys and full accredited representative should include important case deadlines and court dates on the same shared calendar as the rest of the immigration program staff. This information is especially important for supervisors when anticipating planned or unplanned absences.
- Removal defense case files will be periodically taken out of the office for court hearings. If you don't have one already, develop an office policy for handling client confidential information and case files outside of the office. Ensure staff acknowledges such policy by having him or her sign it. It is recommended that you have a backup case file in the office should something happen to the original copy. If you use a case management database for back up, make sure staff is consistent with entering case information and deadlines.
- Each removal defense case may involve multiple proceedings such as a bond hearing and individual hearing for cancellation of removal. Each proceeding requires its own supporting evidence. You may need to modify the way removal defense case files are organized to prevent confusion and misplacement of documents. For instance, you could create a general folder for the client and sub-folders for the different proceedings in that case. Each sub-folder will have its court notices, attorney work product, supporting evidence and other case management documents such as retainer agreement, case notes, case closing, etc.
- Once your case is pending before an Immigration Judge, you are committed to the case unless you file a motion to withdraw or motion to substitute and is approved by the Immigration Court. Therefore, make sure you have a backup plan in case the attorney or accredited representative of record is unavailable. Missing a court hearing or deadline is detrimental to both your client and your program. If you don't have another attorney or full accredited representative on staff, consider utilizing a contract or volunteer attorney to assist, or engage with another local organization that provides removal defense that may also need back-up for their attorney or full accredited representative.
- You may want to notify your insurance carrier that your program will provide court representation for the first time or significantly expand its liability exposure, even if the cost of insurance increases so the agency and staff are adequately covered. You may need or want a higher coverage depending on the type and number of removal cases you assume.

Case Management Forms

There are a few important case management forms and documents you may want to create or update for removal defense such as:

- *Intake form*: Removal defense attorneys and full accredited representatives will need to conduct a full screening for client's eligibility. You may need to update your general intake form to include additional questions to assist with that process. This may include more detailed information on prior criminal and immigration history (such as prior removal orders), eligibility for various forms of relief in immigration court (such as cancellation of removal), and current custody status.
- *Client Services Agreement*: Ensure your agreement clearly defines the scope of representation. You should also include a statement that there is no guarantee of outcome and that if client loses in immigration court, the client agreement does not include an appeal to the Board of Immigration Appeals, the Circuit Court, or the Supreme Court of the United States. Also, you may want to include a statement that if the client moves or is transferred to another detention facility outside of your geographic service area, you may need to terminate representation.
- *Letter or document educating the client about the removal proceedings*: This letter or document can include information about the immigration court process and etiquette. It should be translated into the client's native language. This can be given at the onset of representation and re-visited when the legal representative is preparing the client for the court hearing.
- *Document checklist*: The checklist provides clients a list of supporting documentation they need to gather for the immigration benefit they are seeking in court. This is usually given at the onset of representation.
- *Sample questions for direct and cross-examination*: When preparing clients and witnesses for direct and cross examination, provide them with a list of questions you will ask during direct examination and questions the government may ask during cross examination. Adequate preparation for direct and cross-examination can make or break a case in immigration court.
- *Case closing letter*: Clients should receive a case closing letter at the end of the case which explains the outcome of the case and implications thereof. If the immigration judge denies the case, the letter should include appeal rights, options, and deadlines and information about other possibilities for representation if your agency cannot represent the client in the appeal. If the case is approved, the letter should include an explanation of the immigration benefit the client received as well as next steps (especially if client will be eligible to adjust status or petition for family in the future) and consequences of any future illegal activity (especially criminal and immigration law violations).
- *"Know Your Rights", safety planning and other informational materials for the clients and their family*: It is important to educate your clients and their family

about their rights in case they or their family members get stopped by the police, ICE officers, or get detained. You should prepare your client for the worst-case scenario and inform them how they should contact you if they are detained.

Outreach and Obtaining Clients

After you assessed your caseload capacity, staff resources, and modified your case management policies and procedures, your immigration program may be ready to conduct outreach and market your removal defense services.

- It is important to have an outreach strategy that is tailored to your program goals. If your program plans to start slow in the beginning, it might be best to target your outreach to local organizations and private attorneys for referrals only. After your program capacity increases, you may want to expand your outreach to the rest of the community with “Know Your Rights” presentations and other outreach methods listed below.
- There are various methods and opportunities for you to establish a client base. Here are some suggestions:
 - The Executive Office of Immigration Review maintains a “List of Pro Bono Legal Service Providers” on their website. Non-profit organizations and attorneys who wish to be included on the list will need to submit an application to EOIR, Office of Legal Access Program.⁴ Organizations on the list may need to commit to a certain number of pro bono hours on removal defense work.
 - Coordinate a “Know Your Rights” presentation to the community and make information available about your removal defense services.
 - Connect with local organizations that conduct rapid response work or have Legal Orientation Programs (LOPs) through EOIR.
 - Be involved with coalitions that focus on removal defense and detention.
 - Connect with your local detention facility. The information below discusses how to best connect with your local detention facility.

Tips for connecting to and working with detained clients

- If you have never visited a detention facility, contact the facility and schedule a tour. This is an opportunity for you to engage with the staff at

⁴ For further information or to submit an application refer to <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>

the facility, ask any questions you may have, and understand the policies and procedures for admission as a legal representative.

- Connect with other local nonprofit agencies and pro bono-oriented immigration attorneys who work in the detention center. Ask them for information about the detention center's policies and procedures.
- Become familiar with ICE Detention Standards, commonly referred to as "ICE Performance Based National Detention Standards"⁵ prescribes practices and standards of program operations and management in detention facilities.
- EOIR has a program called the Legal Orientation Program (LOP), which provides free legal orientation to immigrants in detention in select cities across the United States. Check to see if your local detention center has an LOP program and connect with LOP staff to collaborate on removal defense services.
- Whether you are an attorney or full accredited representative, individuals often need to be pre-approved by the detention facility to enter the detention center. Check out the detention center's website to see their visitation guidelines or contact the facility and find out who you need to contact to gain admission. Most detention centers have a Field Office Director (FOD), an Assistant Field Office Director (AFOD), and Supervisory Detention and Deportation Officers (SDDOs) who manage the detention centers and supervise the Deportation Officers (DOs) while others are jointly managed by local law enforcement or a private detention company and Immigration and Customs Enforcement. Since each detention center has different visitation policies and procedures, it is important to contact the detention facility on how to gain access to the center.
- Full accredited representative should be prepared to explain to detention officers their authorization to practice law. Many, if not most, detention officers are not familiar with the recognition and accreditation process and may deny the full accredited representative entry into the facility even if he or she received clearance in advance. It is a good idea to bring the letter of approval for full accreditation in case there are issues to entry.
- Legal representative should limit case discussions with detained clients over the phone. Detained clients should be aware their conversations could be recorded over the phone. In person meetings should be the preferred method of contact with detained clients.

⁵ ICE Detention Standards can be accessed at <https://www.ice.gov/factsheets/facilities-pbnds>

- Be patient. The detention system can be confusing and frustrating and policies and procedures can change suddenly. It is Important to check in regularly with detention center management to obtain updates on local policies and procedures.

Conclusion

The need to provide affordable removal defense services in the immigrant community remains great. As more nonprofit organizations and pro bono attorneys step up to provide removal defense, this ensures everyone has equal access to the legal system and affirms the importance of our immigration court system. We hope you continue to critically think about the provision of your immigration services to ensure efficiency and quality for all those needing assistance.