

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

February, 2018

Volume 2, Number 2

The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

ANATOMY OF A RIAC ADVISAL: Part 8 Stalking INA §237(a)(2)(E)(i)

Last month we covered “crimes of domestic violence” (CODV) under INA §237(a)(2)(E). Included in that section are other criminal grounds for removal that involve a crime of stalking, violation of protection order, and crimes involving abuse or neglect of a child, what we refer to as a “crime against a child” (CAC). See INA §237(a)(2)(E)(i). Because violations of an Order of Protection are so common, and because Orders of Protection are being granted often without request, we will cover this pervasive topic in next month’s Newsletter. This month we will talk about Stalking laws and their impact on Immigration issues.

Under New York law, there is a specific offense called Stalking found in Penal Law §§120.45-120.60. In addition to the crimes of Stalking, however, there are other offenses that might trigger this ground of removability such as Menacing 2d under 120.14(2); Menacing 1st for a previous Menacing 2d conviction under subdivision 2, and Harassment 2d under 240.26(2) and (3). The other Harassment and Aggravated Harassment statutes arguably do not fit the definition of “stalking” because they involve a single act as opposed to a “course of conduct” required to meet the definition of stalking. Nevertheless, those offenses are also CIMTs, possible CODVs and possible CACs depending on who the complainant is, so they should be avoided on other grounds.

Strategies to avoid a Stalking conviction:

1. Negotiate a plea to violations, Disorderly Conduct or Trespass, or the misdemeanor Criminal Trespass 2d.
2. Find another safe misdemeanor if the facts “fit,” e.g. Criminal Mischief, Unauthorized Use of a MV, or Jostling. We can often find a safe plea depending on the facts and circumstances of the



Spring is coming soon.....

In This Issue:

**ANATOMY OF A RIAC ADVISAL:
Part 7 - Stalking**



**IMMIGRATION AND FAMILY LAW:
New Family Court Resources**

UPCOMING EVENTS

Oneida County Assigned
Counsel School for Criminal
Defenders
March 3, 2018
Issues in "Crimmigration"
MVCC, Utica NY

Onondaga County ACP CLE:
March 23, 2018
Time & Location TBD

Tompkins/Cortland County CLE:
Immigration Issues in Criminal
and Family Court
May 30, 2018
12:00 – 2:30 pm
Tompkins Co Mental Health ,
201 East Green Street, Ithaca,
NY

Chief Defenders & Assigned Counsel
Administrators:

Contact the RIAC2 to schedule a
training, lunch hour or other
session in your office/county. We
will provide CLE credit!

CONTACT US!

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case.

Other considerations:

3. If the complainant is a minor, keep the age out of the "record of conviction," meaning a "clean" allocation and no references to a charging document.
4. If the complainant is a spouse, family member or other person protected by the DV laws, avoid any reference to that person in any allocation or the record of conviction to avoid a CODV.
5. **As there will probably be an Order of Protection issued, advise your client of the consequences of violating any Temporary or Permanent Order of Protection! Your client becomes removable from the U.S. for violating any no contact or stay away provision of an order of Protection, with or without a criminal conviction for doing so.**
(Orders of Protection will be discussed next month!)

As always, your client's immigration status determines the possible outcome of any case, so it is imperative that you contact the RIAC as soon as you get assigned the case for a non-citizen client!

IMMIGRATION AND FAMILY LAW: NEW FAMILY COURT RESOURCES

Two resources are now available for those who practice in Family Court. One is a Memorandum from the Advisory Council on Immigration Issues in Family Court to Chief Judge Lawrence Marks dated October 27, 2017, which contains an extremely helpful chart to guide attorneys in any type of Family Court case. That Memo is attached. The other is a website set up by the Fund for Modern Courts entitled "Immigrants and State Courts." The site breaks down the Articles of the Family Court Act and highlights the immigration issues as they relate to each of the Articles.

The website is: <http://immigrants.moderncourts.org/>.

Both are excellent places to go to get a basic idea of the consequences for a non-citizen client who is involved in Family Court. We will be discussing the immigration consequences in Family Court in upcoming newsletters- stay tuned.

RIAC trainings: All of the CLEs put on by the RIAC are FREE and we have been able to offer CLE credits. We have even gotten approved for some ethics credit (.5) and we are working on getting approval for the new requirement for diversity! So, there is no reason not to attend if you are a criminal or family court practitioner.

