



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 1

CONDUCT A THOROUGH INTAKE : SOME DOs and DON'Ts

In This Issue:

Anatomy of a RIAC Advisal:
Part 1

CONDUCT A THOROUGH
INTAKE

Upcoming Events

CONTACT US!

Tel. (315)356-5794

Fax (315)356-5795

Sharon Ames, Esq.
sames@ocgov.net
CELL: (315)272-0505

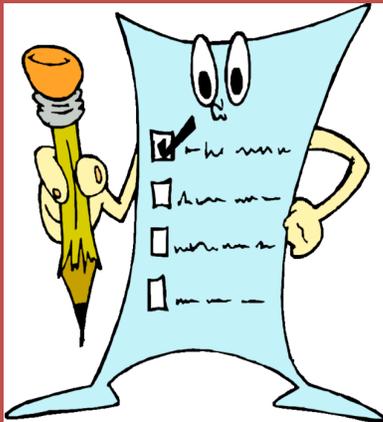
Tina Hartwell, Esq.
thartwel@ocgov.net
CELL: (315)264-9217

Contact the RIAC. Attorneys should ask EACH AND EVERY CLIENT where he or she was born. If the answer is not the United States, the attorney should contact the RIAC immediately. (Do not assume your client is or is not a citizen of the United States!) When contacted, the RIAC will send an “intake package” with a questionnaire and a list of documents to copy that give us what we need to provide you with the proper advice for your client.

We understand that time is scarce. However, if incorporated into the attorney’s intake process, at the very least, if thoroughly completed, this intake saves precious time later on in the case, e.g. when plea negotiations are taking place; when critical pre-trial decisions must be made and/or a plea is offered for a limited time period; or a judge is pressing you to move the case. At the most, it can save your client from being deported (even while your case is pending)!

Why is this important? The immigration laws are fraught with complex rules, and exceptions to those rules, that depend on the happening of certain events. Here are just a few examples:

- Commission of a “crime involving moral turpitude” (CIMT) within 5 years of the client’s “admission” to the U.S. makes a client deportable;
- Being “present” in the U.S. for 7 consecutive years prior to the commission of an offense may help a client with certain immigration benefits;

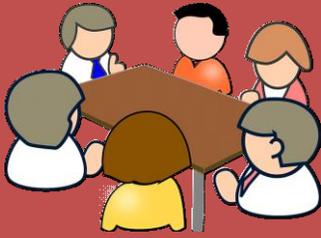


- Having a parent become a U.S. citizen (USC) when a child is under the age of 18 may allow that child to be a U.S. citizen (USC) by operation of law.

Let's say that your client is charged with Petit Larceny and Robbery 2d. Client says he has never been arrested. The DA wants a plea to the Petit Larceny in satisfaction of the charges with a recommended sentence of probation. You are patting yourself on the back for getting your client out of a felony. You know what an "aggravated felony" is and you also avoided that as well, great job! Your client says he came into the U.S. with a green card five years ago. When the client pleads guilty and is sentenced, ICE shows up to arrest your client, and then you find out that he entered the U.S. four years, 11 months and 29 days ago. You also find out that your client was 18 years old at the time of disposition, and that he thinks his mother may be a U.S. citizen (USC). You finally get the rap sheet and there is a prior arrest for Petit Larceny that was ACD'd. Your client is taken into ICE custody and placed in removal proceedings for a minor shoplifting conviction (i.e. CIMT committed within 5 years of admission). In this case, your client is YO eligible (NOT a conviction for immigration purposes), and may even be a U.S. citizen (USC), but you don't know that because you didn't get all of the necessary information from your client and did not call the RIAC. This is just an example of some of the factual circumstances that affect your client's ability to remain in the U.S., and could be a violation of the attorney's duty under *Padilla*.

Here are some Dos and Don'ts:

- DO** fill in each and every question on the intake form, even if the question does not apply (N/A).
- DO** take the necessary time for this process. It will save time later and can avoid potential ICE contact that could subject your client to removal proceedings.
- DO** provide copies of requested documents. You must verify the facts about your client's criminal and immigration history.
- DO** use an independent, qualified interpreter to get the best and most information possible from your client.
- DO** contact the RIAC with any questions. Details matter!
- DO** get a release of information if necessary to obtain documents from an outside source.
- DON'T** rely on family members or friends to act as interpreters.
- DON'T** share any immigration information with the ADA, the Court, pretrial release or diversion staff, or other third parties (except the RIAC) unless determined to be necessary for the advisal. This is confidential information!



UPCOMING EVENTS:

March 18, 2017:

9:15 am – 4:00 pm
NYSACDL CENTRAL NY SPRING
SEMINAR 2017
Dineen Hall, Syracuse University
College of Law, Syracuse, NY
13244

March 25, 2017:

9:00 am – 12:00 pm
ONEIDA CO BAR ASSOCIATION
CLE
“Representing Non-Citizens
under the New Administration”
Mohawk Valley Community
College, IT Room 225, Utica, NY

March 31, 2017:

12 pm – 3 pm
BROOME CO PUBLIC DEFENDER
Basic Concepts in
“Crimmigration”: Immigration
Consequences in Criminal Court
Broome County Public Library,
1st Floor, 185 Court Street,
Binghamton, NY
Email dstrange@ocgov.net to
register.

April 6, 2017: TOMPKINS
COUNTY ACP

Defense Strategies in Criminal
and Family Court
TC3 Ithaca Extension Center,
118 Tioga Street, 6th fl, Rm 611
Ithaca, NY 12:30 pm – 4:00 pm

DON'T wait until you are on your way into court to call the RIAC, unless you have just found out or suspect that your client is not a USC. (Exception: CAFA attorneys who are only appearing for arraignments.)

DON'T skip over questions on the intake form. Call the RIAC if you have any questions or don't understand what is being asked. Each question is there for an important reason.

DON'T make assumptions about the client's status or anything else related to immigration matters (e.g. “it's only a misdemeanor,” “it's ok, he's been here a long time”).

The advisal process will be easier and discussions more productive if all of the relevant facts are known to both counsel and the RIAC. Your cooperation is both essential and appreciated!