

FIGHTING FOR NATURALIZATION AND CITIZENSHIP IN THE CULTURE OF NO

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INTRODUCTION

Follow the three golden rules:

- 1) KNOW THE LAW - There is no substitute, no short-cut and no excuse;
- 2) KNOW THE FACTS - Even if you have to extract them from an unwilling client or a slow-moving government; and
- 3) DO NOT LIE - And do your best to make sure that your client does not lie either.

GENERAL REQUIREMENTS AND PROCEDURES

I. REQUIREMENTS

Naturalization is the process by which one goes from lawful permanent residence to U.S. citizenship. The requirements for naturalization are set forth at §§ 312 through 319 of the Immigration and Nationality Act (hereinafter "the Act" or "INA") and 8 C.F.R. §§ 312 through 319, and need not be set forth here. However, before touching her/his first naturalization case, and regularly as time goes on, a lawyer should carefully read all of those provisions (see Introduction above). It is surprising how many things are in there that we forget, and how many things we think are in there that are not.

II. PREPARING THE APPLICATION

The Application for Naturalization, Form N-400, serves two distinct purposes. First, and most obviously, it is the USCIS form by which a lawful permanent resident initiates the process of becoming a U.S. citizen. But second, and maybe more importantly, it serves as a checklist or "go/no-go" gauge for the lawyer to decide whether the client should proceed to seek naturalization, and if so, what obstacles or dangers might lie in

the client's path.

The N-400 is loaded with dangerous inquiries. A "yes" or "no" to some of them can lead to removal proceedings, while an inaccurate answer to others can cause the N-400 to be denied. Specifically, you need to hammer your client on claiming to be a citizen, voting and registering to vote, because a "yes" can lead to removal. Pay particular attention to the criminal stuff. There are two things you need to do with those questions before submitting your client's N-400. First, you need to be absolutely sure to make complete and total disclosure. Second, with regard to any "yes" to those questions, you need to understand for yourself how it is that the affirmative answer will or will not produce a denial of the N-400 and/or lead to removal proceedings.

This is what you should be doing here: If while preparing an N-400 you realize that your client obtained her LPR status improperly (marriage fraud, phony labor certification, falsely claimed to be single to immigrate through second preference, etc.), you most likely need to tell her that you cannot now submit the N-400 for her, and explore other possibilities to try to help her fix her status. Second, if in preparing the N-400 you realize that your client is at risk of removal proceedings with no remedy, you tell him that and send him home. Third, if when preparing the N-400 you realize that your client has removal exposure (say an old UCW conviction), but is eligible for naturalization and has defenses in removal proceedings, you need to make full lawyer disclosure, tell your client what might happen and what you think the chances are, and let your client choose whether to continue.

An underlying problem here is that all of us have a tendency to cover up things in our past of which we are embarrassed and which we would really prefer to forget. However, if Mr. Smith is doing an N-400 he needs to come absolutely clean about these things. The reason is not necessarily that the ancient acts will lead to removability. They might, but also, once he goes to the interview and swears to the truth of the statements in the N-400, his omission of these incidents from that application becomes "false testimony under oath" for the purposes of determining whether he has good moral character. If the interviewing officer decides that Smith made those false statements not because of embarrassment, but for the purpose of obtaining an immigration benefit (naturalization), he has no GMC for the next five years. Remember, the "false testimony for the purpose of obtaining any benefits under this Act" that negates good moral character pursuant to § 101(f)(6) of the Act does not have to be material; it only has to be false and given with the subjective intent to obtain immigration benefits. See Gonzalez-Maldonado v. Gonzales, 487 F.3d 975, 977 (5th Cir. 2007).

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