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Naturalization and Citizenship

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NATURALIZATION and CITIZENSHIP

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INTRODUCTION

Follow three golden rules:

1. KNOW THE LAW - There is no substitute, no short-cut and no excuse. Read the statute first, then read the regulations, and finally, read the cases last, not the other way around.[2]

2. KNOW THE FACTS - Even if you have to extract them from an unwilling client.

3. DO NOT LIE - And do your best to make sure that your client does not lie either.

SYNOPSIS

NATURALIZATION – Refers to the *process of becoming* a United States citizen. The law of naturalization is derived from Clause 4, Section 8, Article I of the U.S. Constitution: "The Congress shall have power…To establish an uniform rule of Naturalization… ."

CITIZENSHIP – Refers to the *state of being* a United States citizen. The law of citizenship is derived from the Naturalization Clause, *supra*, and from the first sentence of the 14th amendment to the U.S. Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."[3]

THE STATUTE – Immigration and Nationality Act ("INA") Secs. 301-357, 8 U.S.C. Secs. 1401 – 1489.

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[1] This paper draws heavily on papers written by Richard S. Fischer and Gary E. Endelman for prior UTCLE conferences.

[2] A note on legal research: while there are many fine treatises, books and articles available for purchase on this topic, 99.99% of what you need to know is available for free at your local public library, law library or online. Author Kowalski suspects that there has been, of late, some diminution in the legal research skills of all attorneys of all ages. He blames the Internet, and encourages all attorneys to take a sacred vow to brush up on their research skills.

[3] Birthright citizenship is under attack from the dangerously uninformed, for short-term political gain. Author Kowalski encourages all lawyers to educate themselves on this important subject. *See generally*, http://www.immigrationpolicy.org/just-facts/defending-fourteenth-amendment, "Defending the Fourteenth Amendment," Immigration Policy Center.

THE REGULATIONS – 8 C.F.R. 301-499.

<u>NATURALIZATION: REQUIREMENTS AND PROCEDURES</u>

<u>Preparing the Application</u>: Naturalization is the process by which one goes from lawful permanent residence to U.S. citizenship. The requirements for naturalization are set forth at INA §§ 312 through 319. Before touching your first naturalization case, and regularly as time goes on, you should carefully read all of those provisions. It is surprising how many things are in there that we forget, and how many things we think are in there that are not.

The Application for Naturalization, Form N-400, serves two distinct purposes. First, it is the USCIS form by which a lawful permanent resident initiates the process of becoming a U.S. citizen. Second, and perhaps 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. Appendix 1 is the portions of that form containing the most dangerous questions. A "yes" or "no" to some of them can bring out the handcuffs and 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 Part 10, Section A, questions 1, 2 and 3 (re claiming to be a citizen, voting and registering to vote,) because a "yes" can lead to removal. Pay particular attention to Part 10, Section D, questions 15-21 (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 might or might not produce a denial of the N-400 and/or lead to removal proceedings. *See* Part 10, Section D, questions 22-28, and 30-32 (other good moral character questions.)

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 maintain or change 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 her that and send her home. Third, if when preparing the N-400 you realize that your client has removal exposure (say an old conviction) but <u>is</u> 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.

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