

Civil and Criminal Implications of Enforcement

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Defendant's Decisions

After full consultation are:

- What plea to enter.
- Whether to waive a jury trial.
- Whether to testify at their own behalf.
- Whether to appeal.
- Whether to represent herself.
- The objective and general methods of representation.



Strategic Decisions

To be made by lawyer after full consultation:

- Which witnesses to call.
- Whether to conduct cross examination.
- Which jurors to accept or strike.
- What trial motions to make.
- All other strategic or tactical decisions.
- Counsel on appeal has no constitutional duty to raise every non-frivolous issue requested by a defendant.
- Nor does appellate counsel have a duty to file a petition for rehearing.



Ethical Considerations

Padilla v. Kentucky (559 U.S. 356 (2010))

- Defense counsel has a duty to inform a non-citizen of the immigration consequences of a guilty plea to a crime

Communication


- Timeliness of communicating with clients



Topics

- Business from consulting firms – be careful where you get your business
- If client tells you the absolute truth - due diligence
- Citizenship application – where they really come from and if they came legally or illegally.
- Management (not just employers) have exposure – employment
- I-9 compliance
- Conflict between employer and management.
- Who do you represent?

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Exposure to criminal offenses such as harboring, transporting, encouraging aliens, fraud

- Become an old attorney and not an old man/woman that used to be in attorney.
- Criminal immigration enforcement is one of the DOJ's top priorities.
- Worksite enforcement efforts are equally focused on those who unlawfully seek work in the U.S. as well as the employers who knowingly hire them.
- Immigration document and benefit fraud are crimes that threaten the national security and public safety.
- There is exposure to both client and attorney.

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