

Advising Clients of Litigation Options, Appeals, and Fees: “Don’t Get Exhausted”

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Discussing Litigation with Client

- Explaining to a client –Who What How
- Overcoming reluctance to be a plaintiff
- Discussing fees
- Alternative fee arrangements
- Possibility of EAJA fees—Never Promise
- Engagement / Retainer letters – Mandatory
- Co-Counseling

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Do You Have a Good Case for Successful Litigation?

- Mistakes of fact or law in denial
- Decision based on policy vs. law
- Inconsistencies with prior decisions
- Did someone already win/lose your case--Pacer
- Where is a good case for litigation?
- Good record
 - Expert opinion(s)
 - Every issue addressed
 - Independent verifiable evidence
 - Decision disregarded credible facts

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MTR, Appeal or Federal Court

Four options:

- When best to refile?
- When best to file MTR?
- When best to appeal to AAO?
- When best to litigate in federal court

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Exhaustion of Administrative Remedies

- Law – Darby vs. Cisneros
- Likelihood of defense being raised?
- Issue if appeal pending?
- Issue if government reopens?
- Pattern and Practice/Bad Faith Reopening

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Questions? Comments?

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