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10 Discipline of Practitioners

10.1 Practitioner Discipline Generally

The Executive Office for Immigration Review has the authority to impose disciplinary sanctions on attorneys or accredited representatives who violate rules of professional conduct in practice before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security. See 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5), 1003.101-106, 1292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

Generally, discipline of practitioners is initiated by the filing of a complaint. See Chapter 10.5 (Filing a Complaint). Any individual, including Immigration Judges, may file a complaint about the conduct of a practitioner.

10.2 Definition of Practitioner

For purposes of this Chapter, “practitioner” refers to an alien’s attorney or representative, as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively. The term “representative” refers to non-attorneys authorized to practice before the Immigration Courts and the Board of Immigration Appeals, including law students and law graduates, reputable individuals, accredited representatives, accredited officials, and persons formerly authorized to practice. See 8 C.F.R. §§ 1001.1(j), 1292.1(a) - (b). See also Chapter 2 (Appearances Before the Immigration Court).

10.3 Jurisdiction

(a) Immigration Judges. — Immigration Judges have the authority to file complaints concerning practitioners who appear before them.

The disciplinary procedures described in this chapter do not apply to Immigration Judges. For information on Immigration Judge conduct, see Chapter 1.3(c) (Immigration Judge conduct and professionalism).

(b) Practitioners. — The disciplinary procedures described in this chapter apply to practitioners who practice before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security. See 8 C.F.R. § 1003.101.

(c) DHS attorneys. — The disciplinary procedures described in this chapter do not apply to attorneys who represent the Department of Homeland Security (DHS). The conduct of DHS attorneys is governed by DHS rules and regulations. Concerns or complaints about the conduct of DHS attorneys may be raised in writing with the DHS Office of the Chief Counsel where the Immigration Court is located. A list of DHS Offices of the Chief Counsel is available on the DHS website at www.ice.gov/about/district_offices.htm.

(d) Unauthorized practice of law. — The disciplinary procedures described in this chapter apply to *practitioners* who assist in the unauthorized practice of law. See 8 C.F.R. § 1003.102(m). Anyone may file a complaint against a practitioner who is assisting in the unauthorized practice of law. See 10.5 (Filing a Complaint).

The disciplinary procedures described in this chapter do not apply to *non-practitioners* engaged in the unauthorized practice of law. Anyone harmed by an individual practicing law without authorization should contact the appropriate law enforcement or consumer protection agency. In addition, persons harmed by such conduct are encouraged to contact the Executive Office for Immigration Review Fraud Program. See Chapter 1.4(b) (EOIR Fraud Program), Appendix B (EOIR Directory).

In general, the unauthorized practice of law includes certain instances where non-attorneys perform legal services, give legal advice, or represent themselves to be attorneys. Individuals engaged in the unauthorized practice of law include some immigration specialists, visa consultants, and “notarios.”

10.4 Conduct

The following conduct by practitioners may result in discipline:

- frivolous behavior, under the following standard:
 - a practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay
- ineffective assistance of counsel, as previously determined in a finding by the Board of Immigration Appeals or an Immigration Judge in an immigration proceeding, if a disciplinary complaint is filed within one year of the finding

- repeated failure to appear for scheduled hearings in a timely manner without good cause
- conduct that would constitute contempt of court in a judicial proceeding
- misconduct resulting in disbarment, suspension from practicing law, or resignation with an admission of misconduct from a state licensing authority or federal court
- a conviction for a serious crime
- a false statement of material fact or law, if made knowingly or with reckless disregard
- a false certification of a copy of a document, if made knowingly or with reckless disregard
- assisting in the unauthorized practice of law
- grossly excessive fees
- bribery, coercion, or attempted bribery or coercion, with the intent to affect the outcome of an immigration case
- improperly soliciting clients
- misrepresenting qualifications or services offered

See 8 C.F.R. § 1003.102. These examples do not constitute the only grounds for which disciplinary sanctions may be imposed.

10.5 Filing a Complaint

(a) Who may file. - Anyone may file a complaint against a practitioner, including Immigration Judges, Board Members, the practitioner's clients, Department of Homeland Security personnel, and other practitioners. 8 C.F.R. § 1003.104(a)(1).

(b) What to file. - Complaints must be submitted in writing. Persons filing complaints are encouraged to use the Immigration Practitioner Complaint Form, (Form EOIR-44). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-44 provides important information about the complaint process, the confidentiality of

complaints, and the types of misconduct that can result in discipline by the Executive Office for Immigration Review. Complaints should be specific and as detailed as possible, and supporting documentation should be provided if available.

(c) Where to file. — Complaints alleging practitioner misconduct before the Immigration Courts or the Board of Immigration Appeals should be filed with the Executive Office for Immigration Review, Office of the General Counsel (OGC). 8 C.F.R. § 1003.104(a)(1). The completed Form EOIR-44 and supporting documents should be sent to:

Office of the General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Attn: Bar Counsel

See Appendix B (EOIR Directory). After receiving a complaint, OGC decides whether to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b). See Chapter 10.7 (Disciplinary Proceedings).

(d) When to file. — Complaints should be filed as soon as possible. There are no time limits for filing most complaints. However, complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by an Immigration Judge or the Board of Immigration Appeals. 8 C.F.R. § 1003.102(k).

10.6 Duty to Report

A practitioner who practices before the Immigration Courts, the Board of Immigration Appeals, or the Department of Homeland Security has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)); or
- has been disbarred or suspended from practicing law, or has resigned with an admission of misconduct

8 C.F.R. §§ 1003.103(c), 1292.3(c)(4). The practitioner must report the misconduct, criminal conviction, or discipline to the Executive Office for Immigration Review, Office of the General Counsel within 30 days of the issuance of the relevant initial order. This duty applies even if an appeal of the conviction or discipline is pending.

10.7 Disciplinary Proceedings

(a) In general. — Disciplinary proceedings take place in certain instances where a complaint against a practitioner is filed with the Executive Office for Immigration Review, Office of the General Counsel, or a practitioner self-reports. See Chapters 10.5 (Filing a Complaint), 10.6 (Duty to Report). See generally 8 C.F.R. §§ 1003.101 - 1003.109.

(b) Preliminary investigation. — When a complaint against a practitioner is filed, or a practitioner self-reports, the Executive Office for Immigration Review, Office of the General Counsel (OGC) conducts a preliminary investigation. Upon concluding the investigation, OGC may elect to:

- take no further action;
- issue a warning letter or informal admonition to the practitioner;
- enter into an agreement in lieu of discipline; or
- initiate disciplinary proceedings by filing a Notice of Intent to Discipline (NID) with the Board of Immigration Appeals and serving a copy on the practitioner

(c) Notice of Intent to Discipline. — The NID contains the charge(s), the preliminary inquiry report, proposed disciplinary sanctions, instructions for filing an answer and requesting a hearing, and the mailing address and telephone number of the Board of Immigration Appeals.

(i) Petition for Immediate Suspension. — If a practitioner subject to a Notice of Intent to Discipline (NID) has been convicted of a serious crime, or disbarred or suspended from practicing law by a state licensing authority or federal court, the Executive Office for Immigration Review, Office of the General Counsel files a petition with the Board of Immigration Appeals to immediately suspend the practitioner from practicing before the Immigration Courts and the Board until the conclusion of the disciplinary proceedings.

The Board may set aside such a suspension upon good cause shown, if doing so is in the interest of justice. The hardships that typically accompany suspension from practice, such as loss of income and inability to complete pending cases, are usually insufficient to set aside a suspension order.

(ii) DHS motion to join in disciplinary proceedings. — The Department of Homeland Security (DHS) may file a motion to join in the disciplinary proceedings.

If the motion is granted, any suspension or expulsion from practice before the Immigration Courts and the Board of Immigration Appeals will also apply to practice before DHS.

(d) Answer. — A practitioner subject to a Notice of Intent to Discipline (NID) has 30 days from the date of service to file a written answer with the Board of Immigration Appeals and serve a copy on the Executive Office for Immigration Review, Office of the General Counsel (OGC). See Chapter 3.2 (Service on the Opposing Party). The answer is deemed filed when it is *received* by the Board.

(i) Contents. — In the answer, the practitioner must admit or deny each allegation in the NID. Each allegation not expressly denied is deemed admitted. In addition, the answer must state whether the practitioner requests a hearing. If a hearing is not requested, the opportunity to request a hearing is deemed waived.

(ii) Motion for Extension of Time to Answer. — The deadline for filing an answer may be extended for good cause shown, pursuant to a written motion filed with the Board of Immigration Appeals no later than 3 working days before the deadline. The motion should be filed with a cover page labeled “MOTION FOR EXTENSION OF TIME TO ANSWER” and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

(iii) Default order. — If the practitioner does not file a timely answer, the Board of Immigration Appeals issues a default order imposing the discipline recommended by OGC, unless special considerations are present.

(iv) Motion to set aside default order. — A practitioner may file a written motion with the Board of Immigration Appeals to set aside a default order. The motion must be filed within 15 days of service of the default order. The motion should be filed with a cover page labeled “MOTION TO SET ASIDE DEFAULT ORDER” and comply with the requirements for filing. For information on the requirements for filing with the Board, parties should consult the Board of Immigration Appeals Practice Manual.

In the motion, the practitioner must show that the failure to file a timely answer was caused by exceptional circumstances beyond the practitioner’s control, such as his or her serious illness or the death of an immediate relative, but not including less compelling circumstances.

(e) Adjudication. — If a practitioner files a timely answer, the matter may be referred to an Immigration Judge or other appropriate official who will act as the adjudicating official in the disciplinary proceedings. An Immigration Judge cannot adjudicate a matter in which he or she filed the complaint or which involves a practitioner who regularly appears in front of that Immigration Judge.

(i) Adjudication without hearing. — If the practitioner files a timely answer without a request for a hearing, the matter is adjudicated without a hearing.

(ii) Adjudication with hearing. — If the practitioner files a timely answer with a request for a hearing, a hearing is conducted as described subsections (A) through (D), below.

(A) Timing and location. — The time and place of the hearing is designated with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. The practitioner is afforded adequate time to prepare his or her case in advance of the hearing.

(B) Representation. — The practitioner may be represented by counsel at no expense to the government.

(C) Pre-hearing conferences. — Pre-hearing conferences may be held to narrow issues, obtain stipulations between the parties, exchange information voluntarily, or otherwise simplify and organize the proceeding.

(D) Conduct of hearing. — At the hearing, the practitioner has a reasonable opportunity to present evidence and witnesses, to examine and object to the government's evidence, and to cross-examine the government's witnesses.

(iii) Decision. — In rendering a decision, the adjudicating official considers the preliminary inquiry report, the Notice of Intent to Discipline, the practitioner's answer and any supporting documents, and evidence and testimony presented at the hearing, if a hearing was held.

(iv) Sanctions authorized. — A broad range of sanctions are authorized, including expulsion from immigration practice, suspension from immigration practice, and public or private censure.

(v) Appeal. — The decision of the adjudicating official may be appealed to the Board of Immigration Appeals. A party wishing to appeal must file a Notice of

Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case (Form EOIR-45). See Chapter 11.2 (Obtaining Blank Forms), Appendix E (Forms). The Form EOIR-45 is specific to disciplinary proceedings. The Form EOIR-45 must be received by the Board no later than 30 calendar days after the adjudicating official renders an oral decision or mails a written decision.

Parties should note that, on appeal, the Board may increase the sanction imposed by the adjudicating official. See *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

(g) Where to file documents. — As in most immigration proceedings, documents in disciplinary proceedings should be filed with the adjudicator with jurisdiction over the case, as described below.

(i) Timely response. — Prior to a timely response, documents should be filed with the Board of Immigration Appeals.

(ii) Default order. — If a default order has been entered, documents should be filed with the Board.

(iii) Adjudication. — During adjudication by an adjudicating official, documents should be filed with the adjudicating official.

(iv) Appeal. — If an appeal has been filed, documents should be filed with the Board.

10.8 Notice to Public

(a) Disclosure generally authorized. — In general, action taken on a Notice of Intent to Discipline may be disclosed to the public. See 8 C.F.R. § 1003.108(c).

(b) Lists of disciplined practitioners. — Lists of practitioners who have been expelled, suspended, or publically censured are posted at the Immigration Courts, at the Board of Immigration Appeals, and on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. These lists are updated periodically.

10.9 Effect on Practitioner's Pending Immigration Cases

(a) Duty to advise clients. — A practitioner who is disciplined is obligated to advise all clients whose cases are pending before the Immigration Courts, the Board of

Immigration Appeals, or the Department of Homeland Security that he or she has been disciplined.

(b) Pending cases deemed unrepresented. — Once a practitioner has been expelled or suspended, the practitioner's pending cases are deemed unrepresented. The Immigration Court rejects filings that are submitted by a practitioner after he or she has been expelled or suspended. See Chapter 3.1(d) (Defective filings).

(c) Ineffective assistance of counsel. — The imposition of discipline on a practitioner does not, by itself, constitute evidence of ineffective assistance of counsel in the practitioner's former cases.

(d) Filing deadlines. — An order of practitioner discipline does not automatically excuse parties from meeting any applicable filing deadlines.

10.10 Reinstatement

(a) Following suspension. — Following a suspension, reinstatement is not automatic. To be reinstated following a suspension, a practitioner must:

- file a motion with the Board of Immigration Appeals requesting to be reinstated; and
- show that he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(j), respectively

8 C.F.R. § 1003.107(a).

(b) During suspension for more than one year. — A practitioner suspended for more than one year may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed or one-half of the suspension has elapsed, whichever is greater. The practitioner must serve a copy of the petition on the Executive Office for Immigration Review, Office of the General Counsel. In the petition, the practitioner must show that:

- he or she is an attorney or representative as defined in 8 C.F.R. §§ 1001.1(f) and 1001.1(g), respectively;
- he or she possesses the moral and professional qualifications required for immigration practice; and

- his or her reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b).

The Board has the discretion to hold a hearing to determine if the practitioner meets all of the requirements for reinstatement. If the Board denies a petition for reinstatement, the practitioner is barred from filing a subsequent petition for reinstatement for one year from the date of denial.

(c) If expelled. — A practitioner who has been expelled may file a petition for reinstatement with the Board of Immigration Appeals after one year has passed, under the provisions described in (b), above.

(d) Cases pending at reinstatement. — Suspension or expulsion terminates representation. A practitioner reinstated to immigration practice who wishes to represent clients before the Immigration Court, the Board of Immigration Appeals, or the Department of Homeland Security must enter a new appearance in each case, even if he or she was the attorney at the time that discipline was imposed. See Chapter 2.3(c) (Appearances).