

FACT SHEET

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Professional Conduct for Immigration Practitioners - Rules and Procedures

The Department of Justice recently amended regulations concerning professional conduct for attorneys and other representatives (practitioners) who practice before the Board of Immigration Appeals, the Immigration Courts, and the Immigration and Naturalization Service (INS). These amendments, published as a final rule in the *Federal Register* on June 27, 2000, (at 65 FR 39513) and effective on July 27, 2000, concern procedures for filing and investigating complaints and for conducting disciplinary proceedings against practitioners who may be subject to sanctions.

Among the reasons for amending the professional conduct regulations were to protect the public, to preserve the integrity of all immigration proceedings and adjudications, and to maintain high professional standards among practitioners. This fact sheet outlines major provisions of these regulations and answers certain questions that may arise among prospective complainants and practitioners.

GENERAL PROVISIONS

This professional conduct regulation applies to every private immigration practitioner authorized to practice before the Executive Office for Immigration Review (EOIR) and INS (including attorneys, accredited representatives, and law students, among others). This rule does not apply to Government attorneys, such as INS trial counsel, because they are subject to separate Department of Justice regulations and disciplinary procedures that do not apply to private practitioners.

Agency Jurisdiction

Each agency has jurisdiction over practitioners who appear before their respective tribunals. The Office of the General Counsel in EOIR will investigate and prosecute ethical complaints against practitioners involving alleged misconduct associated with practice before the Immigration Courts and the Board. The INS General Counsel will investigate complaints involving alleged misconduct associated with practice before INS (e.g., asylum, adjustment of status, visa petitions, etc.). Complaints about Government

attorneys fall under the jurisdiction of the Office of Professional Responsibility (OPR) in the Department of Justice.

Disciplinary Process

Any individual who believes that an immigration practitioner has engaged in criminal, unethical, or unprofessional conduct, or frivolous behavior, may file a complaint with the General Counsel of the agency with jurisdiction (EOIR or INS). The complaint must be in writing and include relevant names, dates, locations, and other details sufficient to clearly identify the offending conduct or behavior.

Upon receipt of a complaint, or on its own initiative, the agency with jurisdiction will conduct a preliminary inquiry to determine the merits of the complaint, informing both the practitioner and the complainant of any action taken. The office will dismiss without further action any complaint that is found to have no merit. The office may close a preliminary inquiry if the complainant fails to cooperate or provide reasonable information or assistance. During the preliminary inquiry, the complaint remains confidential unless the practitioner waives the right to confidentiality.

Hearing and Appeal

If a complaint is found to have merit, the agency with jurisdiction will issue a Notice of Intent to Discipline (NID) to the practitioner. The practitioner must respond to the NID within 30 days and may request a hearing. A practitioner's failure to respond to the allegations in the NID in a timely manner may be treated as an admission of misconduct and a forfeiture of the right to a hearing. The Board will then issue a final order imposing the sanctions recommended in the NID.

If a complaint about criminal conduct is found to have merit, it may also be referred to appropriate investigative or prosecutorial authorities within the Department of Justice. Complaints about unethical or unprofessional conduct may also be referred to appropriate local government or licensing authorities.

When a practitioner requests a hearing, the Chief Immigration Judge will appoint an Immigration Judge (IJ) as the adjudicating official who will conduct a hearing and render a decision in the case. The adjudicating official shall not be an IJ before whom the practitioner regularly appears or who has intervened as a complainant or witness in the matter. The disciplinary hearing is generally open to the public.

Either party may appeal an adjudicating official's decision to the Board within 30 days. The Board will conduct its appellate review of disciplinary decisions in the same way as it reviews appeals of decisions in immigration proceedings. Final administrative orders in disciplinary cases are also subject to Federal judicial review.

GROUNDS FOR IMPOSING SANCTIONS

Disciplinary sanctions may follow if, among other things, a practitioner has been found to have engaged in conduct that constitutes a violation of one or more of the following grounds:

1. Charging a grossly excessive fee;
2. Engaging in bribery or coercion;
3. Knowingly making a false statement or willfully misleading, misinforming, threatening, or deceiving any person;
4. Soliciting professional employment - a practitioner is prohibited from distributing solicitation material in or around the premises of any building in which an Immigration Court is located;
5. Is or has been subject to a final order of disbarment or suspension, or has resigned with an admission of misconduct by any State or Federal court;
6. Making a false or misleading communication about qualifications or services (e.g., a practitioner must be recognized as a certified specialist in immigration law in order to refer to themselves as such);
7. Engaging in contemptuous or obnoxious behavior;
8. Has been convicted in any state or federal court of a serious crime;
9. Falsely certifying a copy of a document as being true and complete;
10. Engaging in frivolous behavior;
11. Engaging in conduct that constitutes ineffective assistance of counsel; and
12. Repeatedly failing to appear for scheduled hearings in a timely matter.

IMMEDIATE SUSPENSION

Provisions in the regulation permit the Board of Immigration Appeals to immediately suspend a practitioner who has been subject to either disbarment, suspension, or resignation with an admission of misconduct as imposed by a State or Federal court, or conviction for a serious crime (including any felony). Thereafter, a summary proceeding will be conducted to consider imposition of any final discipline.

REINSTATEMENT

A reinstatement procedure will permit a practitioner to regain authorization to practice once his or her period of suspension before EOIR has expired or, as provided in limited circumstances under the rule, when the period of suspension has not yet expired. Prior to any reinstatement, the practitioner will be required to request reinstatement with the Board and to provide evidence of good standing in his or her licensing jurisdiction.

HIGHLIGHTS OF REVISED AND NEW FORMS

On October 20, 1999, following the required notice and comment period, the Office of Management and Budget certified for publication the following four EOIR forms in connection with the amended regulation concerning Professional Conduct for Practitioners:

1. Revised EOIR-27 (Notice of Entry of Appearance before the BIA).
2. Revised EOIR-28 (Notice of Entry of Appearance before the Immigration Court).
3. New EOIR-44 (Immigration Practitioner Complaint Form).
4. New EOIR-45 (Immigration Practitioner Appeal Form from an Adverse Decision of an Adjudicating Official).

Effective Date of Revised and New Forms; Phase-out of Old Forms

The revised and new forms will be accepted for filing immediately. The Board and the Immigration Courts will continue to accept unrevised versions of EOIR-27 and EOIR-28 during a phase-out period detailed below.

AVAILABILITY AND DUPLICATION OF NEW FORMS

The revised and new forms will be available for distribution at all Immigration Court locations, at the Board, and at INS offices, at no cost. Additionally, EOIR and INS will make the forms available for down-loading from the Internet. The Web site address for EOIR is www.usdoj.gov/eoir and, for INS, www.ins.doj.gov.

Any person may file duplicates of the revised and new forms, provided that any such duplication must conform exactly to font size and type of the government-issue original, respect any original color designation, and be printed on standard 8½ x 11 inch bond paper.

REVISED EOIR-27

Practitioners should begin immediately to file revised EOIR-27 with the Board. The revised form must be used exclusively to enter an appearance after January 1, 2001, at which time all other versions should be discarded.

Revised EOIR-27 will be used:

- 1) to determine whether or not a practitioner is authorized under the regulations to represent aliens before the Board of Immigration Appeals,
- 2) to provide the represented alien an opportunity to expressly consent to the practitioner's representation and to the release of EOIR records to the practitioner where required by law, and
- 3) to formally notify the INS and EOIR of such representation.

Revised EOIR-27 provides information regarding appearances and representation before the Board, including the manner in which a practitioner may properly withdraw from a proceeding.

REVISED EOIR-28

Practitioners should begin immediately to file revised EOIR-28 with the Immigration Courts. The revised form must be used exclusively to enter an appearance after January 1, 2001, at which time all other versions should be discarded.

Revised EOIR-28 will be used (i) to determine whether or not a practitioner is authorized under the regulations to represent aliens before the Immigration Court, (ii) to provide the alien an opportunity to expressly consent to the practitioner's representation and to the release of EOIR records to the practitioner where required by law, and (iii) to formally notify the INS and EOIR of such representation.

Revised EOIR-28 provides information regarding appearances and representation before the Immigration Courts, including how a practitioner may properly withdraw from a proceeding.

NEW FORM EOIR-44

Any person who seeks to file a disciplinary complaint against an immigration practitioner should do so using new form EOIR-44. The INS will accept Form EOIR-44 to initiate complaints against practitioners who practice exclusively before INS. Complete instructions for filing the form will be printed on the back-side of EOIR-44. Additionally, the form provides information on confidentiality, disciplinary complaint procedures, and formal disciplinary proceedings.

EOIR-44 will assist the investigating counsel in EOIR or INS to determine preliminarily what action, if any, should be taken based upon the allegations raised in the complaint, including whether to conduct a preliminary disciplinary inquiry, request additional information from the complainant, and/or refer the complaint to a state bar disciplinary authority.

NEW FORM EOIR-45

An immigration practitioner must use new form EOIR-45 to appeal an adverse decision of an Adjudicating Official to the Board. The disciplinary appeal form addresses how and where to file an appeal of an adverse decision arising out of a disciplinary proceeding, including the following information:

- where to address appeals [Board of Immigration Appeals, Appeals Processing Unit, 5201 Leesburg Pike, Suite 1300 (P.O. Box 8530 for regular mail only), Falls Church, VA 22041, with envelope notation "Disciplinary Appeal"];
- what fee, if any, applies (the current filing fee is U.S. \$110);
- right to representation by an attorney or representative (at no expense to the Government);
- submission of briefs and service on the opposing party (including addresses of service);
- the Board's summary dismissal grounds;
- oral arguments and how they may be requested; and
- required notification of change-of-address.

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QUESTIONS AND ANSWERS

Questions Asked by Complainants:

Q. Where do I file a complaint against my attorney or representative?

A. If the complaint concerns the conduct of an attorney or representative in a matter before the Immigration Court or Board of Immigration Appeals, you file your complaint by sending a completed Form EOIR-44, Immigration Practitioner Complaint Form, to:

Executive Office for Immigration Review
Office of the General Counsel
ATTN: Bar Counsel
5107 Leesburg Pike, Suite 2400
Falls Church, VA 22041

If the complaint concerns the conduct of an attorney or representative in a matter before the Immigration and Naturalization Service, you file your complaint by sending the completed Form EOIR-44, Immigration Practitioner Complaint Form, to:

Immigration and Naturalization Service
Office of Appellate Counsel
5113 Leesburg Pike, Suite 200
Falls Church, VA 22041

You may also write your own statement or letter. This statement or letter must include your name and address, the attorney's or representative's name and address, an explanation of the circumstances and details of your complaint, and your signature. You may also submit supporting documents and information, such as correspondence between you and your attorney or representative, documents concerning the underlying immigration case (including the case name and number), and copies of filings in connection with the case. Neither the Executive Office for Immigration Review nor the Immigration and Naturalization Service can accept complaints over the telephone.

Q. Where can I get the complaint forms?

A. You may obtain a Complaint Form from any Immigration Court, from the Board of Immigration Appeals, from any Immigration and Naturalization Service office, or by writing to either of the above addresses.

Q. After I file a complaint, what will happen next?

A. Your complaint will be reviewed by the investigating office to determine whether the complaint warrants further investigation and, if so, an investigation will be conducted. If, after completing the investigation, the investigating office determines that a violation of the Rules of Professional Conduct for Practitioners has occurred, a Notice of Intent to

Discipline will be issued and then sent to the attorney or representative, including a recommendation that discipline be imposed.

Q. Will I have to testify against my attorney or representative?

A. You may be called to testify if a hearing is held. Your testimony may be important in determining whether your attorney or representative violated the Rules of Professional Conduct for Practitioners.

Q. Can you get my money back for me and find another attorney to represent me?

A. The Government cannot require your attorney to give you your money back. We cannot force your attorney to act for you or tell your attorney how to proceed with your case. We cannot give you legal advice about your case or otherwise represent you. Although we cannot recommend a particular attorney or law firm who might help you, we can give you a List of Free Legal Services providers located in your area.

Questions Asked by Practitioners:

Q. What if one of my clients files a frivolous complaint against me?

A. Every complaint will be investigated thoroughly. If the investigation concludes that no violation of the Rules of Professional Conduct for Practitioners has occurred, the matter will be closed. Except under limited circumstances, complaints are kept confidential.

Q. Am I entitled to be represented by counsel in a disciplinary proceeding?

A. You are entitled to be represented by counsel at no expense to the Government or you may represent yourself, if you so choose.

Q. Where do I get the revised Notice of Appearance forms, the new Complaint form, and the new Appeal form? How long can I continue to use the old forms?

A. These forms can be obtained from Immigration Courts and INS offices and will be accessible on the Internet at the EOIR or INS Web sites. You can continue to use the old forms until January 1, 2001.

Q. Does this rule apply to Government attorneys, too?

A. This rule does not apply to Government attorneys. If you wish to file a complaint against a Government attorney, you should contact the Office of Professional Responsibility at the Department of Justice. Department attorneys must abide by the standards of conduct applicable to Executive Branch employees and the Department's supplemental standards of conduct. Such comprehensive standards and procedures are equal to, or stricter than, those provided in this rule. They provide separate means for seeking discipline of Department attorneys.