



**U.S. Department of Justice**  
Executive Office for Immigration Review  
*Office of the Director*  
5107 Leesburg Pike, Suite 2600  
Falls Church, Virginia 22041

---

## FACT SHEET

**Contact:** Office of Legislative and Public Affairs  
(703) 305-0289 Fax: (703) 605-0365  
**Internet:** [www.usdoj.gov/eoir/](http://www.usdoj.gov/eoir/)

---

August 19, 2004 (revised)

### **Professional Conduct for Immigration Practitioners – Rules and Procedures**

On June 27, 2000, the Department of Justice published a regulation in the *Federal Register* (at [65 FR 39513](#)) concerning professional conduct for attorneys and other representatives (practitioners) who practice before the Board of Immigration Appeals (BIA), the Immigration Courts, and the Department of Homeland Security (DHS) (formerly known as the Immigration and Naturalization Service).

The regulation, which was effective on July 27, 2000, explains procedures for filing and investigating complaints and for conducting disciplinary proceedings against practitioners who may be subject to sanctions. Its purpose is 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 the major regulatory provisions 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 DHS (including attorneys, accredited representatives, and law students, among others). This rule does not apply to Government attorneys, such as DHS trial counsel, because they are subject to separate regulations and disciplinary procedures.

#### **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 BIA. DHS will investigate complaints involving alleged misconduct associated with practice before DHS (e.g., asylum, adjustment of status, visa petitions, etc.).

(more)

**Disciplinary Process**

Any individual who believes that an immigration practitioner has engaged in criminal, unethical, or unprofessional conduct may file a complaint with the agency with jurisdiction (EOIR or DHS). 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 BIA 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 or DHS. 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 as the adjudicating official who will conduct a hearing and render a decision in the case. The adjudicating official shall not be an Immigration Judge before whom the practitioner regularly appears or who has intervened as a complainant or witness in the matter. The disciplinary hearing generally is open to the public.

Either party may appeal an adjudicating official’s decision to the BIA within 30 days. The BIA will conduct its appellate review of disciplinary decisions in the same way 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:

- Charging a grossly excessive fee;  
(more)

- Engaging in bribery or coercion;
- Knowingly or with reckless disregard makes a false statement or willfully misleading, misinforming, threatening, or deceiving any person;
- 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;
- 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;
- Knowingly or with reckless disregard makes a false or misleading communication about qualifications or services (e.g., practitioners must be recognized as certified specialists in immigration law in order to refer to themselves as such);
- Engaging in contemptuous or obnoxious conduct;
- Has been convicted in any State or Federal court of a serious crime;
- Falsely certifying a copy of a document as being true and complete;
- Engaging in frivolous behavior;
- Engaging in conduct that constitutes ineffective assistance of counsel; and
- Repeatedly failing to appear for scheduled hearings in a timely manner without good cause.

### **IMMEDIATE SUSPENSION**

Provisions in the regulation permit the BIA 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 BIA and to provide evidence of good standing in his or her licensing jurisdiction.

### **FORMS**

There are four EOIR forms in connection with the regulation concerning Professional Conduct for Practitioners:

(more)

- **EOIR-27 “Notice of Entry of Appearance before the BIA”** – Practitioners must file the EOIR-27 to enter an appearance with the BIA. The form is used to:
  - Determine whether or not a practitioner is authorized under the regulations to represent aliens before the BIA,
  - 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
  - Formally notify DHS and EOIR of such representation.

In addition, the form provides information regarding appearances and representation before the BIA, including the manner in which a practitioner may properly withdraw from a proceeding.

- **EOIR-28 “Notice of Entry of Appearance before the Immigration Court”** – Practitioners must file the EOIR-28 to enter an appearance with the Immigration Courts. The form is used to:
  - Determine whether or not a practitioner is authorized under the regulations to represent aliens before the Immigration Court,
  - 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
  - Formally notify DHS and EOIR of such representation.

In addition, the form provides information regarding appearances and representation before the Immigration Courts, including how a practitioner may properly withdraw from a proceeding.

- **EOIR-44 “Immigration Practitioner Complaint Form”** – Individuals who seek to file a disciplinary complaint against an immigration practitioner who practices before EOIR and/or DHS may file a Form EOIR-44. The form assists the investigating counsel in EOIR or DHS in determining on a preliminarily basis what action, if any, should be taken based upon the allegations raised in the complaint, including whether to conduct a preliminary inquiry, request additional information from the complainant, and/or refer the complaint to a State bar disciplinary authority.

In addition, the form provides complete filing instructions (on the back) and information on confidentiality, disciplinary complaint procedures, and formal disciplinary proceedings.

(more)

It is important to note that a **Form EOIR-44 is not required** in order to file a complaint. Individuals may write and submit their own complaint statement or letter according to the instructions in the “Questions and Answers” section below.

- **EOIR-45, “Immigration Practitioner Appeal Form from an Adverse Decision of an Adjudicating Official in Practitioner Discipline Case”** – Immigration practitioners must use Form EOIR-45 to appeal to the BIA an adverse decision of an Adjudicating Official regarding a disciplinary proceeding. The form provides filing instructions and information regarding:
  - 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 BIA’s summary dismissal grounds,
  - Oral arguments and how they may be requested, and
  - Required notification of change-of-address.

All four forms are available at all Immigration Court locations, the BIA, and DHS offices, at no cost. In addition, the forms may be downloaded from the Internet. EOIR forms can be accessed on the EOIR Web site at <http://www.usdoj.gov/eoir/formslist.htm>.

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

\* \* \* \* \*

(more)

**QUESTIONS AND ANSWERS**

**For Complainants:**

**Q. How do I make 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, BIA, or DHS, you may complete a **Form EOIR-44, “Immigration Practitioner Complaint Form”** but it is not required. You may write your own complaint 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.

Along with your Form EOIR-44 or your own complaint statement or letter, 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 EOIR nor DHS can accept complaints over the telephone.

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

A. If the complaint concerns the conduct of an attorney or representative in a matter before EOIR (the Immigration Courts or the BIA), send your Form EOIR-44 or your own complaint statement or letter to:

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

(more)

If the complaint concerns the conduct of an attorney or representative in a matter before DHS, send your Form EOIR-44 or your own complaint statement or letter to:

U.S. Citizenship and Immigration Services  
70 Kimball Avenue, Room #103  
Burlington, VT 05403

**Q. Where can I get the EOIR-44 complaint form?**

**A.** You may obtain an EOIR-44 complaint form from any Immigration Court, the BIA, and DHS offices. In addition, the form may be downloaded from the Internet. EOIR forms can be accessed on the EOIR Web site at <http://www.usdoj.gov/eoir/formslist.htm>.

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

**A.** Your complaint will be reviewed by the investigating office to determine whether it 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.** EOIR **cannot**:

- Require your attorney to give you your money back,
- Force your attorney to act for you or tell your attorney how to proceed with your case,
- Give you legal advice about your case or otherwise represent you, or
- Recommend a particular attorney or law firm who might help you.

EOIR **can** give you a list of free legal service providers located in your area. The “Free Legal Service Providers” list is posted by State on the EOIR Internet Web site at <http://www.usdoj.gov/eoir/probono/states.htm>.

(more)

**For 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, if you so choose, you may represent yourself.

**Q. Where do I get the notice of appearance forms (EOIR-27 and EOIR-28), the complaint form (EOIR-44), and the appeal form (EOIR-45) for a practitioner discipline case ?**

A. These forms can be obtained from any Immigration Court, the BIA, and DHS offices. In addition, the forms may be downloaded from the Internet. EOIR forms can be accessed on the EOIR Web site at <http://www.usdoj.gov/eoir/formslist.htm>.

– EOIR –