



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

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# FACT SHEET

[\(in Espanol\)](#)

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

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March 20, 2009

## **EOIR's Disciplinary Program and Professional Conduct Rules for Immigration Attorneys and Representatives**

### *Questions and Answers re: Complaint Process Included*

In June 2000, the Executive Office for Immigration Review (EOIR) implemented a regulation, "Professional Conduct for Practitioners – Rules and Procedures," to protect the public, preserve the integrity of all immigration proceedings and adjudications, and maintain high professional standards among immigration practitioners.

The term "practitioners" applies to private immigration attorneys and representatives who are [authorized to represent aliens](#) before EOIR's immigration courts and the Board of Immigration Appeals (BIA), EOIR's appellate component. It does not apply to government attorneys because they are subject to separate regulations and disciplinary procedures.

The regulation was amended on December 18, 2008, ([Federal Register 73 FR 76914](#)) to [enhance EOIR's Disciplinary Program](#) for immigration attorneys and representatives. The new rules and procedures took effect on January 20, 2009. A list of the current grounds for discipline follows.

### **EOIR's Grounds for Disciplining Attorneys and Representatives**

1. Charging a grossly excessive fee;
2. Engaging in bribery or coercion;
3. Knowingly or with reckless disregard 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 subject to a final order of disbarment or suspension, or has resigned, while a disciplinary investigation or proceeding is pending, from practice before any state or federal court, or executive branch office or agency;

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6. Knowingly or with reckless disregard making 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);
7. Engaging in rude or insulting, or obnoxious conduct that would constitute contempt of court;
8. Having been convicted in any state or federal court of a serious crime;
9. Knowingly or with reckless disregard 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 as found by an immigration judge, the BIA, or a federal court;
12. Repeatedly failing to appear for scheduled pre-hearing conferences or hearings in a timely manner without good cause;
13. Assisting a person other than a practitioner to practice law before EOIR;
14. Engaging in conduct that is prejudicial to the administration of justice;
15. Failing to provide competent representation to a client;
16. Failing to consult with a client concerning the objectives of the representation or abide by decisions of the client concerning how to achieve those objectives;
17. Failing to act with reasonable diligence and promptness;
18. Failing to maintain communication with a client;
19. Failing to disclose to an adjudicator, controlling legal authority known to the practitioner that is directly adverse to the position of the client if not disclosed by opposing counsel;
20. Failing to submit a signed Notice of Entry of Appearance in any case where the practitioner has engaged in "practice" or "preparation" as those terms are defined in the regulations; and
21. Repeatedly filing notices, motions, or briefs that contain boilerplate language that evidences a failure to competently and diligently represent the client.

### **Filing a Complaint About an Immigration Attorney or Representative**

Any individual who believes that an immigration attorney or representative has engaged in criminal, unethical, or unprofessional conduct while practicing before EOIR may file a complaint with the EOIR Disciplinary Counsel. The complaint must be in writing and include relevant names, dates, locations, and other details sufficient to clearly identify the offending conduct or behavior. Individuals are encouraged to use a Form [EOIR-44](#) to file a complaint.

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### **Receiving and Investigating Complaints — EOIR and DHS Authority**

EOIR's Disciplinary Counsel investigates alleged misconduct associated with practice before EOIR's immigration courts and the BIA. The EOIR Disciplinary Counsel will conduct a preliminary inquiry to determine if the complaint has merit. If the EOIR Disciplinary Counsel determines that the complaint has merit and that formal disciplinary sanctions should be imposed, the EOIR Disciplinary Counsel initiates formal disciplinary proceedings before EOIR's BIA. During the preliminary inquiry, the complaint remains confidential, with limited exceptions.

All complaints concerning alleged misconduct associated with practice before the Department of Homeland Security (DHS) must be directed to DHS. (Practice before DHS relates to immigration benefit issues such as affirmative asylum, adjustment of status, and visa petitions.) DHS has similar conduct rules for attorneys and representatives ([8 CFR 292.3](#)). If DHS determines that a complaint has merit and that formal disciplinary sanctions should be imposed, DHS initiates formal disciplinary proceedings before EOIR's BIA.

While EOIR and DHS receive and investigate their respective misconduct complaints separately under their respective conduct rules, both agencies initiate formal disciplinary proceedings before EOIR's BIA.

### **Referring Complaints to Additional Authorities**

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 state licensing authorities.

### **Initiating Disciplinary Proceedings**

If a complaint is found to have merit, EOIR's Disciplinary Counsel or DHS may:

- Informally resolve the complaint through the issuance of a warning letter or informal admonition, or
- Enter into an agreement in lieu of discipline with a practitioner, or
- Initiate formal disciplinary proceedings, which can result in the suspension or expulsion of a practitioner from practicing before the immigration courts, the BIA, and DHS.

Formal disciplinary proceedings begin when EOIR's Disciplinary Counsel or DHS issues a Notice of Intent to Discipline (NID) to the practitioner and files the NID with EOIR's BIA. The practitioner must respond to the NID within 30 days and, in the response, may request a hearing.

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#### **Immediate Suspension**

While EOIR disciplinary proceedings are pending, the BIA may immediately suspend a practitioner who:

- Has been disbarred or suspended by a federal or state court,
- Has resigned from legal practice while a disciplinary investigation or proceeding is pending before a federal or state court, or
- Has been convicted of a serious crime.

#### **Failing to Respond to Allegations**

The BIA considers a practitioner's failure to respond to the allegations in the NID within 30 days as an admission of misconduct and a forfeiture of the right to a hearing. Consequently, when a practitioner fails to respond timely to the allegations in the NID, the BIA will issue a final order imposing the sanctions proposed in the NID.

#### **Requesting a Hearing**

When a practitioner requests a hearing, EOIR's 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 is not an immigration judge before whom the practitioner regularly appears or who is the complainant or a witness in the matter. The disciplinary hearing generally is open to the public.

#### **Disciplinary Decisions - Final Orders - Public Notification**

When the disciplinary proceedings are completed, EOIR issues a final order.

EOIR regularly updates the public about disciplined attorneys and representatives who are no longer authorized to represent clients before the immigration courts, the BIA, and DHS by issuing [news releases](#), available on EOIR's website at <http://www.usdoj.gov/eoir/press/subject.htm> under "Professional Conduct." EOIR also maintains a "[List of Currently Disciplined Practitioners](#)" on EOIR's website at <http://www.usdoj.gov/eoir/profcond/chart.htm>.

#### **Appealing a Disciplinary Decision**

The disciplined attorney or EOIR's Disciplinary Counsel 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. Disciplined attorneys or representatives may seek judicial review of a final BIA decision in their disciplinary case.

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#### **Reinstatement**

Attorneys and representatives who are suspended or expelled must request reinstatement from the BIA. They must be granted reinstatement by the BIA before they can resume the practice of law before the immigration courts, the BIA, and DHS.

#### **Forms**

Below are the four EOIR forms that are mentioned in the professional conduct regulation. These forms are available at immigration courts and on EOIR's website at <http://www.usdoj.gov/eoir/formslist.htm>.

- **Form [EOIR-28](#), Notice of Entry of Appearance before the Immigration Court**  
Practitioners must file the Form EOIR-28 to enter an appearance with the immigration court.
- **Form [EOIR-27](#), Notice of Entry of Appearance before the BIA**  
Practitioners must file the Form EOIR-27 to enter an appearance with the BIA.
- **Form [EOIR-45](#), Immigration Practitioner Appeal Form from an Adverse Decision of an Adjudicating Official in Practitioner Discipline Case**  
Practitioners must use Form EOIR-45 to appeal to the BIA an adjudicating official's adverse decision resulting from a disciplinary proceeding.
- **Form [EOIR-44](#), Immigration Practitioner Complaint Form**  
Individuals who seek to file a disciplinary complaint against an immigration practitioner who practices before EOIR may file a Form EOIR-44. However, 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 on the following page.

#### **Additional Information on the Complaint Process**

A series of questions and answers about the complaint process, for complainants as well as attorneys and representatives, follows on the next page.

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## **The Complaint Process: Questions and Answers** *for Complainants and Attorneys and Representatives*

### **How do I make a complaint against my immigration attorney or representative?**

If the complaint concerns the conduct of a private attorney or representative in a matter before the immigration courts, BIA, or DHS, you may submit a completed Form [EOIR-44](#), Immigration Practitioner Complaint Form, or you may write your own complaint statement or letter.

### **Where can I get the Form [EOIR-44](#) complaint form?**

The Form [EOIR-44](#) complaint form is available at immigration courts and on EOIR's website at <http://www.usdoj.gov/eoir/formslist.htm>.

### **If I use the Form [EOIR-44](#) complaint form, what additional information should I provide?**

Along with your completed Form [EOIR-44](#), 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.

### **If I don't use the Form [EOIR-44](#) complaint form, and instead write my own complaint statement or letter, what information should I provide?**

Your 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 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.

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

If the complaint concerns the conduct of a private attorney or representative in a matter before EOIR's immigration courts or the BIA, send your completed Form [EOIR-44](#) or your own complaint statement or letter with any supporting documents or information to:

Executive Office for Immigration Review  
ATTN: Disciplinary Counsel  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041

If the complaint concerns the conduct of a private attorney or representative in a matter before DHS, send your Form [EOIR-44](#) or your own complaint statement or letter with any supporting documents or information to:

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

**Can I call EOIR or DHS to make my complaint against my immigration attorney or representative over the telephone?**

No. Neither EOIR nor DHS can accept complaints over the telephone.

**After I file a complaint with EOIR, what will happen next?**

After you file a complaint with EOIR:

- Your complaint will be reviewed by EOIR's Disciplinary Counsel to determine whether it should be investigated further.
- If so, an investigation will be conducted.
- After the investigation, EOIR's Disciplinary Counsel determines whether there has been a violation of the professional conduct rules for practitioners.
- If so, EOIR's Disciplinary Counsel may either impose informal discipline (e.g., issue a warning letter or informal admonition), or initiate formal disciplinary proceedings seeking the expulsion, suspension, or censure of the immigration attorney or representative.

**Will EOIR inform me of the status of my complaint?**

Yes. EOIR will notify you when your complaint has been received and will inform you of the outcome of your complaint.

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**Will I have to testify against my immigration attorney or representative?**

Yes, 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 professional conduct rules for practitioners.

**Can EOIR get my money back for me and find another attorney or representative to represent me?**

No. 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.

However, EOIR provides a list of "[Free Legal Service Providers](http://www.usdoj.gov/eoir/probono/states.htm)" on its website at <http://www.usdoj.gov/eoir/probono/states.htm>.

**How do I know if an immigration attorney or representative is currently disciplined by EOIR and, therefore, is not authorized to represent clients?**

EOIR regularly updates the public about disciplined attorneys and representatives who are no longer authorized to represent clients before the immigration courts, the BIA, and DHS by issuing [news releases](#), which are available on EOIR's website at <http://www.usdoj.gov/eoir/press/subject.htm> under "Professional Conduct." EOIR also maintains a "[List of Currently Disciplined Practitioners](#)" on EOIR's website at <http://www.usdoj.gov/eoir/profcond/chart.htm>.

**For Attorneys and Representatives:**

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

Every complaint will be investigated thoroughly. If the investigation concludes that no violation of the professional conduct rules has occurred, the matter will be closed. During the preliminary inquiry, the complaint remains confidential, with limited exceptions.

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

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

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**Where can I get the notice of appearance forms (Form [EOIR-27](#) and Form [EOIR-28](#)), the complaint form (Form [EOIR-44](#)), and the appeal form (Form [EOIR-45](#)) for a practitioner discipline case?**

These forms are available at immigration courts and on EOIR's website at <http://www.usdoj.gov/eoir/formslist.htm>.

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*The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice. Under delegated authority from the Attorney General, immigration judges and the Board of Immigration Appeals interpret and adjudicate immigration cases according to United States immigration laws. EOIR's immigration judges conduct administrative court proceedings in immigration courts located throughout the nation. They determine whether foreign-born individuals — who are charged by the Department of Homeland Security with violating immigration law — should be ordered removed from the United States or should be granted relief from removal and be permitted to remain in this country. The Board of Immigration Appeals primarily reviews appeals of decisions by immigration judges. EOIR's Office of the Chief Administrative Hearing Officer adjudicates immigration-related employment cases. EOIR is committed to ensuring fairness in all of the cases it adjudicates.*