

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE
5107 LEESBURG PIKE, SUITE 2500
FALLS CHURCH, VA 22041

In the Matter of:

Case No: D2005-209

Marshall Lawrence COHEN

Respondent:

IN DISCIPLINARY PROCEEDINGS

ON BEHALF OF RESPONDENT:

Michael J. Corso, Esquire
Henderson, Franklin, Starnes & Holt, P.A.
P.O. Box 280
Fort Myers, FL 33902

ON BEHALF OF THE GOVERNMENT:

Jennifer J. Barnes, Bar Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Eileen Connolly, Appellate Counsel
Appellate Litigation Protection Law Division
Department of Homeland Security
5113 Leesburg Pike, Suite 200
Falls Church, Virginia 22041

AMENDED* ORDER OF THE IMMIGRATION JUDGE

ORDER: It is hereby ordered that:

1. The ground(s) set forth in the Notice of Intent to Discipline have not been established by clear, convincing, and unequivocal evidence and are, hereby, dismissed.
2. The ground(s) 8 C.F.R. § 1003.102(e)(1) set forth in the Notice of Intent to Discipline have been established by clear, convincing, and unequivocal evidence. Any remaining ground(s) set forth in the Notice of Intent to Discipline have not been established by clear, convincing, and unequivocal evidence and are, hereby, dismissed.

The following disciplinary sanction shall be imposed:

- Practitioner shall be permanently expelled from practice before:
- The Board of Immigration Appeals and the Immigration Courts
 - The Immigration and Naturalization Service
 - Both

*This order is amended to correct the attached decision. The correction is on page 6, footnote 3, referencing April 26, 1995 as the date of disbarment ordered by the Supreme Court of Georgia. The correct date of disbarment by the Supreme Court of Georgia is April 26, 2005.

Practitioner shall be suspended from practice before:
 The Board of Immigration Appeals and the Immigration Courts
 The Immigration and Naturalization Service
 Both
 Until April 25, 2010

Practitioner shall be publically/privately censured

Other appropriate disciplinary sanction

Date: 5/2/06



Anne J. Greer
Immigration Judge

APPEAL: WAIVED/RESERVED
APPEAL DUE BY: May 28, 2006
See Attached EOIR 45
See Attached Decision of Immigration Judge

CERTIFICATE OF SERVICE

This Order on Case D2005-209 was served on the following persons in the manner so noted on this the 2nd day of May 2006:

cc: Ms. Jennifer J. Barnes
Bar Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
(Hand Delivery)

Ms. Eileen Connolly
Appellate Counsel
Department of Homeland Security
5113 Leesburg Pike, Suite 200
Falls Church, VA 22041
(Mail)

Michael J. Corso, Esquire
Henderson, Franklin, Starnes
& Holt, P.A.
P.O. Box 280
Fort Myers, FL 33902-0280
(Certified Mail)

for 

Mark L. Pasierb
Chief Clerk of the Immigration Court

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE
5107 LEESBURG PIKE, SUITE 2500
FALLS CHURCH, VA 22041

File: D2005-209

In the Matter of)
)
 Marshall Lawrence COHEN) IN DISCIPLINARY PROCEEDINGS
)
 Respondent.)

ON BEHALF OF RESPONDENT:
Michael J. Corso, Esquire
Henderson, Franklin, Starnes & Holt, P.A.
P.O. Box 280
Fort Myers, FL 33902

ON BEHALF OF THE GOVERNMENT:
Jennifer J. Barnes, Bar Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Eileen Connolly, Appellate Counsel
Appellate Litigation Protection Law Division
Department of Homeland Security
5113 Leesburg Pike, Suite 200
Falls Church, Virginia 22041

AMENDED* DECISION OF THE IMMIGRATION JUDGE

I. Introduction

Bar Counsel for the Executive Office for Immigration Review (Bar Counsel) has charged the respondent, Marshall Lawrence Cohen, as subject to discipline pursuant to 8 C.F.R. § 1003.102(e)(1) of the Rules of Professional Conduct for Practitioners. The charge results from the respondent's disbarment from the practice of law in the State of Georgia. Bar Counsel asks that the respondent be suspended for a period of five years before the Executive Office for Immigration Review (EOIR).

*This decision is amended to correct page 6, footnote 3, referencing April 26, 1995 as the date of disbarment ordered by the Supreme Court of Georgia. The correct date of disbarment by the Supreme Court of Georgia is April 26, 2005.

The Department of Homeland Security (DHS) has moved that the respondent be suspended for the same period of time from practice before that agency.

The respondent has denied the charge that he violated 8 C.F.R. § 1003.102(e)(1), challenging the findings of his disbarment order and asserting that he was denied due process by the Supreme Court of Georgia.

For the reasons set forth below, the ground for discipline under 8 C.F.R. § 1003.102(e)(1) has been established. The respondent is prohibited to practice before EOIR and DHS for a period of five years.

II. Brief Procedural History and Recitation of the Facts

On April 26, 2005, the respondent was disbarred by the Supreme Court of Georgia. *See* Group Exhibit 1, attachment 1. The disbarment resulted from a determination that the respondent violated Georgia's Rules of Professional Conduct during his representation of a client in a criminal case. *See* Group Exhibit 1, attachment 1. The Supreme Court of Georgia found that the respondent: (1) provided incompetent representation, (2) willfully abandoned a legal matter entrusted to him to the detriment of his client, (3) failed to communicate with his client, (4) charged an unreasonable fee, provided virtually no services and refused to make a refund, (5) made false representations to the trial court regarding his eligibility to practice law in Georgia, (6) engaged in the unauthorized practice of law, and (7) engaged in professional conduct involving deceit and misrepresentation. *See* Group Exhibit 1, attachment 1.

On October 17, 2005, EOIR Bar Counsel filed a Petition for Immediate Suspension and a Notice of Intent to Discipline against the respondent with the Board of Immigration Appeals (Board). *See* Group Exhibit 1, Exhibit 2.

On October 19, 2005, the DHS filed a Motion for Reciprocal Discipline, asking that any discipline imposed upon the respondent based on the Notice of Intent to Discipline be similarly imposed on the respondent in practice before the DHS. *See* Exhibit 3. Also on October 19, 2005, the DHS filed a Motion to Broaden the Scope of the Petition for Immediate Suspension, asking that the respondent be suspended from practice before DHS as well. *See* Exhibit 4.

On October 31, 2005, Bar Counsel filed a Notice of Service of the Notice of Intent to Discipline, offered as proof that the respondent received proper service of the Notice of Intent to Discipline on October 21, 2005. *See* Exhibit 5.

On November 8, 2005, the Board granted the Petition for Immediate Suspension and suspended the respondent from practice before both EOIR and DHS. *See* Exhibit 6.

On November 16, 2005, the respondent filed his answer to the Notice of Intent to Discipline. *See* Group Exhibit 7. In his answer, the respondent admitted to the Supreme Court of Georgia's April 26, 2005 decision ordering his disbarment, but asserted his disagreement with the Court's findings. The respondent stated that the Supreme Court of Georgia "wrongfully did not consider" his response to the allegations, and that the proceedings were "so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." *See* Group Exhibit 7. The respondent asserted "affirmative defenses" to the charge by Bar Counsel, and moved that the Notice of Intent to Discipline be denied and his immediate suspension vacated. *See* Group Exhibit 7.

On February 7, 2006, the Court held a pre-hearing conference with both parties. The Court established a briefing schedule, asking the parties to address: (1) Whether there existed any issue of material fact that would warrant an evidentiary hearing; (2) Whether the respondent could rebut the regulatory presumption under 8 C.F.R. § 1003.103(b)(2) that reciprocal discipline be imposed in this matter as a result of the Supreme Court of Georgia's order of disbarment; and (3) What timeframe would be required in the event that reciprocal discipline were imposed. On February 8, 2006, the Court memorialized the contents of the pre-hearing conference in a written order.

On March 1, 2006, the respondent filed his pre-hearing brief. In his brief, the respondent asserted that he was wrongfully disbarred by the Supreme Court of Georgia because: (1) the Georgia Bar Committee only recommended a suspension and not disbarment; (2) the counsel for the Georgia Bar employed "unethical procedures" in "presenting a default to the Georgia Supreme Court" instead of his written response; and (3) the court ignored his written response to the allegations, a fact confirmed by the dissent, "showing a lack of opportunity to be heard and chicanery by the Georgia Bar Counsel all constituting a deprivation of due process."

The respondent also offered the following additional arguments to support his claim that he should not be subject to discipline before EOIR and DHS: (1) he was on "inactive" bar status in Georgia when the Georgia disciplinary proceedings began; (2) he was in "good standing" with the Florida Bar and Virginia Bar, and admitted to the New York State Bar; (3) the Florida bar only suspended him for thirty days for the conduct that was the subject of the Georgia disciplinary proceedings; (4) he provided restitution to the client in question; (5) the definition of "attorney" in the federal regulations is ambiguous; and (6) the conduct that was the subject of his Georgia disciplinary proceedings was not based on or connected to immigration matters.

On March 14, 2006, Bar Counsel filed a response to the respondent's pre-hearing brief. Bar Counsel argued that the respondent is subject to summary disciplinary proceedings based upon his disbarment in Georgia. Further, Bar Counsel argued that the respondent has failed to rebut the presumption of professional misconduct. Bar Counsel also asserts that the respondent had misstated the significance of the dissent in the Supreme Court of Georgia decision, and that the remaining arguments are irrelevant to these summary disciplinary proceedings.

III. Synopsis of Law

An attorney may be subject to disciplinary sanctions if an adjudicating official or the Board finds discipline to be in the public interest. 8 C.F.R. § 1003.101(a). If an attorney has engaged in criminal, unethical, or unprofessional conduct, discipline is deemed automatically to be in the public's interest. *Id.*

If an attorney is subject to a final order of disbarment in the jurisdiction of any state, possession, territory, commonwealth, the District of Columbia, or in any federal court in which the practitioner is admitted to practice, that individual shall be subject to disciplinary sanctions in the public interest. 8 C.F.R. §§ 1003.101(a), 1003.102(e)(1). Such disbarment precludes him or her from qualifying as an "attorney" under 8 C.F.R. §§ 1.1(f) and 1001.1(f), and that individual is therefore not permitted to represent others before either EOIR or DHS. 8 C.F.R. §§ 292.1, 1292.1.

Disbarment establishes a rebuttable presumption of professional misconduct. 8 C.F.R. § 1003.103(b)(2). Disciplinary sanctions must follow, unless that individual can rebut this presumption by demonstrating by clear, unequivocal, and convincing evidence that: (1) the underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) there was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accepted as final the conclusion on that subject; or (3) the imposition of discipline by the adjudicating official would result in grave injustice. *Id.*; see also *Matter of Ramos*, 23 I&N Dec. 843 (BIA 2005).

IV. Findings

At the pre-hearing conference, the Court found that, based upon the evidence submitted into the record, namely the final order of disbarment issued by the Supreme Court of Georgia, a rebuttable presumption had been established that disciplinary sanctions should be imposed. The Court granted the parties an opportunity to brief any issues of material fact that would give rise to the necessity for an evidentiary hearing. In their briefs, neither party indicated that any material fact at issue in these proceedings was not in the written record. The respondent did not provide additional evidence. He continues to rely on the dissenting opinion filed by Justice Benham in the Supreme Court of Georgia decision ordering his disbarment, and an EOIR news release dated February 9, 2005 announcing the "Latest Disciplinary Actions Under the Rules of Professional Conduct."¹ Bar Counsel has submitted a certified copy of the Supreme Court of Georgia's denial of the respondent's motion for reconsideration of his disbarment order. After

¹These items are attached to respondent's brief as Exhibits "A" and "B" and were previously admitted into the record as part of Group Exhibit 7.

careful evaluation of the briefs and documents submitted by both parties, the Court will issue its decision based on the evidentiary record.

It is undisputed that the respondent has been disbarred by the State of Georgia. *See* Exhibit 1, attachment 1. The respondent therefore does not qualify as an attorney under the controlling regulations and is not authorized to represent aliens before EOIR or DHS. *See* 8 C.F.R. §§ 1.1(f), 1001.1(f). “Attorney” means one who is “a member of good standing of the bar of the highest court of any state, possession or territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law.” 8 C.F.R. §§ 1.1(f), 1001.1(f) (emphasis added). The respondent’s disbarment in Georgia renders him unable to qualify as an “attorney” under the regulations. *See* 8 C.F.R. §§ 1.1(f), 1001.1(f).

To avoid discipline, the respondent must show by clear, unequivocal and convincing evidence that his circumstances fall within one of the three regulatory exceptions contained in 8 C.F.R. § 1003.103(b)(2). The court finds that the respondent has not met this burden for any of the three regulatory exceptions that might excuse him from discipline.²

First exception. The respondent has not shown by clear, unequivocal, and convincing evidence that the underlying disciplinary proceedings were so lacking in notice or an opportunity to be heard as to constitute a deprivation of due process. *See* 8 C.F.R. § 1003.103(b)(2)(i).

The respondent asserts in his brief that he was denied due process by the Supreme Court of Georgia, alleging a lack of opportunity to be heard due to “chicanery” by Georgia Bar Counsel. The respondent argues that the dissent to the Georgia Supreme Court’s disbarment order affirms these allegations.

However, the record does not support the respondent’s claims. The order of the Supreme Court of Georgia states that the respondent was not entitled to an evidentiary hearing regarding his disbarment because he failed to file a Notice of Rejection within 30 days of service of his Notice of Discipline in Georgia. *See* Exhibit 1, attachment 1. The Georgia State Bar Rules (Georgia Rules) require the Notice of Rejection to be timely filed with the Georgia Supreme Court. *See* GA. COMP. R. & REGS. 4-208.3 (2005). The Georgia Rules state that “[u]nless the Notice of Discipline is rejected by the respondent as provided in Rule 4-208.3,” the respondent “shall be in default” and “shall have no right to any evidentiary hearing.” *See* GA. COMP. R. & REGS. 4-208.1 (2005).

²Bar Counsel requests that the Court find the respondent to have waived two of the three exceptions because the respondent only addressed the exception regarding deprivation of due process. The Court declines to deem the others waived, and has considered all three exceptions in reaching a decision.

The respondent's characterization of the dissent's position is inaccurate. Justice Benham noted in a footnote that "the respondent did not file a timely a Notice of Rejection and Response to Pending Grievance because he sent them to the State Bar of Georgia rather than this Court." See Exhibit 1, attachment 1, page 5. Justice Benham did not find that discipline was inappropriate in the respondent's case or that the respondent was denied due process. Rather, he disagreed with the sanction imposed by the majority, which was more severe than the State Bar Investigative Panel's recommendation. In particular, Judge Benham did not agree that "disbarment [was] the appropriate level of discipline to be imposed." See Exhibit 1, attachment 1 (emphasis added).³

Second exception. The respondent has not shown by clear, unequivocal, and convincing evidence that there was such an infirmity of proof establishing his professional misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the disbarment order.

In the order of disbarment, the Supreme Court of Georgia outlined the underlying facts that provided the basis for the Notice to Discipline. See Exhibit 1, attachment 1. These facts were accepted by default due to the respondent's failure to timely file his Notice of Rejection with the Georgia Supreme Court as required under the Georgia Rules of Professional Conduct. See GA. COMP. R. & REGS. 4-208.1 (2005). The Court notes that the Supreme Court of Georgia denied respondent's motion to reconsider the order of disbarment.⁴

Third exception. The respondent has not shown by clear, unequivocal, and convincing evidence that the imposition of discipline by this adjudicating official would result in grave injustice.

The court has carefully considered the evidence presented and cannot find grave injustice in imposing the discipline requested by Bar Counsel and DHS. The Supreme Court of Georgia, in a decision in which six of the seven justices agreed, found that the respondent's professional conduct warranted disbarment. The respondent moved the court to reconsider the disbarment, and the court denied the motion, with the same six justices in the majority. The existence of a dissenting opinion and respondent's unsupported allegations of misconduct by the Georgia Bar Counsel do not constitute clear, unequivocal, and convincing evidence of injustice.

³The April 26, 2005 Supreme Court of Georgia decision ordering respondent's disbarment reflects that the respondent did file a Notice of Rejection with the Georgia Bar Counsel on the thirtieth day after service of the Notice of Discipline. The respondent's Notice of Rejection was forwarded to the Supreme Court of Georgia by Georgia Bar Counsel.

⁴The record contains a copy of the respondent's Motion for Reconsideration, which includes his position on the issue of filing the Notice of Rejection, and his response to the Notice to Discipline. See Group Exhibit 7.

The respondent's remaining arguments in his brief do not provide any legal or factual support for his position that discipline should not be imposed. The respondent's claim that he was in an inactive status in Georgia at the time of the Georgia disciplinary proceedings does not matter. The regulations under 8 C.F.R. §§ 1.1(f), 1001.1(f) do not differentiate between active and inactive status. Similarly, the mere fact of being in good standing in other jurisdictions, or having received a lighter sanction for his misconduct in another jurisdiction, would not alleviate the regulatory consequences of the Georgia Supreme Court order of disbarment. Further, if the respondent ultimately made restitution to his client, this fact, if proven, would not alter the outcome of the Georgia State Court disbarment order. The respondent noted in his "Written Response to Pending Grievance", that ". . . whatever monies have been paid to me have been earned as attorney fees or used for costs".⁵ Any restitution subsequently paid apparently occurred after the date of the Georgia State Court disbarment order. Finally, the regulations do not require that his professional misconduct be related to immigration matters.

In sum, the regulations direct that the respondent be disciplined unless he can satisfy the evidentiary burden set forth in the regulations. *See* 8 C.F.R. § 1003.103(b)(2). The respondent has not met that burden. By regulation, discipline must therefore follow. *See* 8 C.F.R. § 1003.103(b)(2).

V. Order

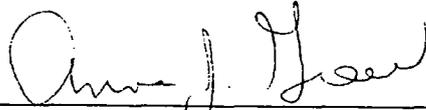
Bar Counsel requests that the respondent be suspended from practice before EOIR for a period of five years, and DHS requests discipline in kind. Both requests are based on Georgia rules that prohibit the respondent from seeking readmission to that bar for a minimum of five years from the date of disbarment. *See* Supreme Court of Georgia, Rules Governing Admission to the Practice of Law, § 10 (July 2005).

As the discipline requested by Bar Counsel and DHS conforms to the respondent's disbarment and the applicable Georgia rules, the court will impose such discipline, and the respondent will be suspended from practice before the Board, the Immigration Courts, and DHS for a five year period, running from the date of his disbarment in Georgia. Accordingly, the following order is entered:

⁵This document formed part of the respondent's motion for reconsideration, which was denied by the Georgia Supreme Court on May 23, 2005. It is contained in the record as part of Group Exhibit 7.

ORDER: The respondent is hereby suspended from practice before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security for five years, nunc pro tunc to April 26, 2005, and until further order of the Board of Immigration Appeals on application for reinstatement pursuant to 8 C.F.R. § 1003.107(a).

Date: 5/2/06



Anne J. Greer
Assistant Chief Immigration Judge

**Notice of Appeal to the Board of Immigration Appeals of
Decision of Adjudicating Official in Practitioner
Disciplinary Case**

1. List Name of Practitioner: _____

Case Number: _____

Address: _____

(Number and Street)

(Suite No.)

(City)

(State)

(Zip Code)

2. Date of Adjudicating Official's decision: _____

For Official Use Only

3. **Basis for Appeal** — Please explain in detail the basis for your appeal. Use additional sheets of paper if necessary and attach to this form. Failure to specify the factual or legal basis for your appeal may lead to summary dismissal without further notice, unless you provide specific details in a timely, written brief or statement filed with the Board.

(Attach more sheets if necessary.)

Staple check or money order here.
Include practitioner's name and case number on the check.

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing the data needed, completing and reviewing the collection of information, and record-keeping. Send comments regarding this burden estimate or any other aspect of this information collection including suggestions for reviewing this burden to the Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

Notice of Appeal to the Board of Immigration Appeals of Decision of Adjudicating Official in Practitioner Disciplinary Case

1. List Name of Practitioner: _____

Case Number: _____

Address: _____

(Number and Street)

(Suite No.)

(City)

(State)

(Zip Code)

2. Date of Adjudicating Official's decision: _____

For Official Use Only

3. **Basis for Appeal** — Please explain in detail the basis for your appeal. Use additional sheets of paper if necessary and attach to this form. Failure to specify the factual or legal basis for your appeal may lead to summary dismissal without further notice, unless you provide specific details in a timely, written brief or statement filed with the Board.

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(Form continues on back)

**Notice of Appeal to the Board of Immigration Appeals of
Decision of Adjudicating Official in Practitioner
Disciplinary Case**

1. List Name of Practitioner: _____

Case Number: _____

Address: _____
(Number and Street) (Suite No.)

(City) (State) (Zip Code)

For Official Use Only

2. Date of Adjudicating Official's decision: _____

3. **Basis for Appeal** — Please explain in detail the basis for your appeal. Use additional sheets of paper if necessary and attach to this form. Failure to specify the factual or legal basis for your appeal may lead to summary dismissal without further notice, unless you provide specific details in a timely, written brief or statement filed with the Board.

Staple check or money order here.
Include practitioner's name and case number on the check.

(Attach more sheets if necessary.)

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing the data needed, completing and reviewing the collection of information, and record-keeping. Send comments regarding this burden estimate or any other aspect of this information collection including suggestions for reviewing this burden to the Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

4. I do do not request oral argument before the Board of Immigration Appeals.
5. I will will not file a separate written brief or statement in addition to the "Basis for Appeal" written above or accompanying this form.

Your appeal may be summarily dismissed by the Board of Immigration Appeals if you indicate in Item #5 that you will file a separate written brief or statement and you fail to file such a brief or statement within the time period scheduled and you do not reasonably explain such failure.

6. Name of Practitioner's Attorney or Representative:

Address: _____
(Number and Street) (Suite No.)

(City) (State) (Zip Code)

An attorney or representative will not be recognized as the attorney of record on appeal and will not receive documents or correspondence in connection with appeal unless he or she submits a completed Form EOIR-27.



X _____
 Signature of Practitioner (or Practitioner's Attorney or Representative) Date: _____

CERTIFICATE OF SERVICE
 (Must Be Completed)

I _____ mailed or delivered a copy of this notice of appeal
(Name)

on _____ to _____
(Date) (Appellee—INS or EOIR)

at _____
(Address of Appellee)



X _____
 Signature of Practitioner (or Practitioner's Attorney or Representative)

Be sure you have:

- Read all of the General Instructions
- Provided all of the requested information
- Completed and signed the Certificate of Service
- Attached the required fee or fee waiver request
- Signed the form
- Served a copy of this form and all attachments on the Office of the General Counsel, ATTN: Bar Counsel Executive Office for Immigration Review or, where the Immigration and Naturalization Service is the appellee, the Office of the General Counsel, INS

**Notice of Appeal to the Board of Immigration Appeals of
Decision of Adjudicating Official in Practitioner
Disciplinary Case**

General Instructions—Please read carefully before completing and filing Form EOIR-45.

1. When and Where to Appeal:

- You must send the Notice of Appeal, Form EOIR-45, so that it is received by the Board of Immigration Appeals (Board) within thirty (30) calendar days after the Adjudicating Official's oral decision or, if no oral decision was rendered, within thirty (30) calendar days after the date the Adjudicating Official's written decision was mailed.
- Simply mailing the Notice of Appeal within the time limit may not insure that the notice of Appeal is timely received by the Board. If your Notice of Appeal is received outside of the time limit, it will be dismissed as untimely. Send or deliver your Notice of Appeal to:

Board of Immigration Appeals, Clerk's Office (note on the envelope *Disciplinary Appeal*)

If by courier, overnight delivery service, or in person:

5107 Leesburg Pike, Suite 2000

Falls Church, VA 22041

(Hrs: Mon—Fri 8:00am to 4:30pm)

If by regular first class mail:

P.O. Box 8530

Falls Church, VA 22041

2. How to Pay for the Appeal:

- Attached to the Notice of Appeal, Form EOIR-45, a check or money order for exactly one hundred and ten dollars (U.S. \$110) payable to the "United States Department of Justice." All checks must be drawn on a bank located in the United States. Write the Practitioner's name and the case number on the check or money order.
- If you cannot pay for the appeal, you must complete and submit a Fee Waiver Request (Form EOIR-26A). The Board will review your request and decide whether to allow the appeal to be filed without payment of the required fee:

3. Representation by an Attorney or Representative:

- You may be represented by an attorney or a representative who is authorized to appear before the Board. The government will not pay for your attorney or representative.
- If you are represented by an attorney or representative, he or she must file a notice of Entry of Appearance Before the Board of Immigration Appeals (Form EOIR-27) at the same time this Notice of Appeal, Form EOIR-45, is filed.

4. Submission of Briefs:

- You must state detailed reasons for your appeal on the Notice of Appeal, Form EOIR-45, even if you indicate that you intend to file a brief. Please indicate in Item #5 on the Notice of Appeal, Form EOIR-45, if you will file a separate written brief or statement with the board. The Board will send you a briefing schedule and, in most cases, a hearing transcript.
- Send a copy of your brief or statement to the Office of the General Counsel of the Executive Office for Immigration and Naturalization Service, whichever is the appellee in your case. You must also provide the Board with a certificate of the service stating that you have mailed or delivered the brief or statement to EOIR or INS, as appropriate.

Office of the General Counsel, EOIR

ATTN: Bar Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Office of the General Counsel, INS

ATTN: Appellate Counsel
5113 Leesburg Pike, Suite 200
Falls Church, Virginia 22041

5. Summary Dismissal of Appeal:

- The board may summarily dismiss any appeal for any of the following reasons: 1) the practitioner fails to specify the reasons for the appeal; 2) the only reason specified by the practitioner for his or her appeal involves a finding of fact or conclusion of law which was concealed by him or her in the disciplinary proceeding below; 3) the Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in fact or law; 4) the practitioner indicates that he or she will file a separate written brief or statement in support of the appeal and he or she fails to file such a brief or statement within the time period scheduled and does not reasonably explain such failure; and/or 5) the appeal fails to meet essential statutory or regulatory requirements.

6. Request for Oral Argument:

- If you indicate in Item #4 on Form EOIR-45 that you request oral argument before the board, the Board will inform you if your request is granted. The Board ordinarily will not grant a request for oral argument unless you also file a separate written brief or statement.

7. Notification of Change of Address:

- You or your attorney or representative must notify the Board within five (5) days of any change in address or telephone number by submitting the Form EOIR-27 (use Additional Information section.) A change of address notification is effective only for the case in which it is submitted.