

# Procedure for Handling Complaints against Board Members

## July 1, 2011

*The Board of Immigration Appeals (Board) takes allegations and complaints of inappropriate Board Member conduct seriously. The Board will investigate complaints promptly and take remedial and/or disciplinary action as appropriate. This document summarizes the Board's process for the handling of complaints against its Members.*

### I. INTAKE

#### A. Formal Complaints

1. **Formal complaints.** A complaint can be submitted by an individual, entity, or group. As a general rule, complaints should be submitted in writing and posted by mail to the Chairman's attention at 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041.<sup>1</sup> Oral complaints are discouraged but may be considered when appropriate.
2. **Anonymous complaints.** Complaints may be submitted anonymously, but they will be treated as "discovered information," as described below.
3. **All complaints.** All complaints must identify the Board Member and clearly identify the alleged Board Member misconduct. All complaints must contain sufficient information for the Board to investigate the allegation(s). Complaints should also contain the complainant name, address, telephone number, and any other contact information the complainant wishes to provide to the Board.

#### B. Discovered information

1. **Scope.** The Board may act upon any information alleging Board Member misconduct outside the filing of a formal complaint and may treat "discovered information" as a complaint. Discovered information comes to the attention of the Board through a variety of means, including but not limited to: (i) concerns raised by other EOIR or Department of Justice (DOJ) components; (ii) serious judicial criticism by a reviewing court; and (iii) Board review of its own decisions.
2. **Treatment.** Discovered information shall be processed as a complaint.

#### C. Recordation

All complaints (that are not frivolous on their face) will be assigned a unique identifier and recorded. The Board will maintain a complaint log.

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<sup>1</sup> Where the alleged Board Member conduct relates specifically to the Chairman, the complaint should be directed to the Vice Chairman's attention. In such a circumstance, all references to "Chairman" in this document are deemed to relate to the Vice Chairman, as appropriate.

#### D. Preliminary assessment of complaint

1. ***Frivolous.*** When a complaint, on its face, does not raise a genuine conduct concern, the complaint will be deemed “frivolous” and dismissed without investigation. Similarly, discovered information that does not raise a genuine conduct concern will be disregarded. Examples of frivolous complaints include: (i) complaints regarding the legal outcome of a case before the Board and not the conduct of the Board Member; and (ii) complaints faulting Board Members for adjudications outside the Board’s jurisdiction.
2. ***Non-frivolous.*** When a formal complaint or discovered information raises a genuine concern about Board Member conduct, the complaint or discovered information will be considered a “complaint,” logged in, and investigated.

#### E. Notice to Complainant

Where a formal complaint is deemed non-frivolous and comes from an identifiable source with contact information, the Board will, as appropriate, acknowledge receipt of the complaint.

## II. AGENCY INVESTIGATION

### A. Prior to Board Investigation

#### 1. *Notice to Board Member.*

- a. ***Notice provided.*** As appropriate, the Board Member will be notified in a timely fashion that a complaint has been filed against him or her, and the Board Member will be given an opportunity to respond. If a complaint can be dismissed or concluded without the Board Member’s input, the Board Member may be notified upon its resolution.
- b. ***No notice provided.*** A Board Member will not be notified in the following uncommon circumstances:
  - i. The complainant has requested confidentiality, and the Chairman has agreed.
  - ii. The allegations fall under the jurisdiction of an investigatory body, such as the Office of the General Inspector (OIG), the Office of Professional Responsibility (OPR), or other DOJ office.<sup>2</sup>

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<sup>2</sup> OIG has jurisdiction over allegations of criminal wrongdoing and serious administrative misconduct by Department employees. OPR has jurisdiction over complaints of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice. In the rare instance that either office is involved, the decision whether and when to advise a Board Member of the existence of a complaint will be made in consultation with the investigating office.

- iii. Notice to the Board Member would compromise an ongoing OIG, OPR, or other investigation.
  - iv. The Chairman, in his or her discretion, finds it necessary to withhold notification due to the circumstances surrounding the allegations of misconduct.
2. **Case reassignment.** If a complaint or discovered information involves a matter that is pending at the Board during the time of an investigation, the Chairman will decide whether the matter should be reassigned, readjudicated, or otherwise processed without the participation of the Board Member who is the subject of inquiry.

## **B. Board Investigation**

1. **Investigator.** For matters that fall within EOIR's jurisdiction, the Chairman, depending on the nature of the complaint, may assign the investigation of the complaint to the Vice Chairman or a senior Board manager. In the course of investigating the complaint, the investigator may review any pertinent information available, including: related records of proceedings; oral argument audio recordings; documentation provided by the complainant; and investigation records of other entities. The investigator may also solicit statements from any appropriate person, including the complainant, the Board Member, EOIR staff, witnesses, and outside investigators.

### **2. Consultation.**

The Chairman and/or the investigator may consult EOIR's Employee and Labor Relations Unit (ELR) regarding the investigation and/or disposition of the complaint, including whether the complaint should be referred to an investigatory agency. The Chairman may also consult with other EOIR components regarding the complaint, as appropriate.

## **III. ACTION**

### **A. Findings**

The investigator will usually provide the Chairman with a written report of his or her factual findings. If written, this report will be made part of the complaint record. As a general rule, the investigator's report should not make recommendations on what action or actions the Chairman should take.

### **B. Disposition**

Once the Chairman has received the investigator's report, the Chairman will determine whether the complaint is meritorious and whether corrective or remedial action should be taken. The Chairman may consult with the Director and/or ELR to determine the appropriate action to take.

1. ***Dismissal of complaint.*** The Chairman may dismiss a complaint as not meritorious or not significant enough to warrant corrective or remedial action. The reasons for dismissal include, but are not limited to:
  - the complaint relates not to conduct but to disagreement with the merits of a Board Member's legal reasoning or decision
  - the allegations are disproved
  - the allegations cannot be substantiated
  - the allegations, even if true, do not constitute inappropriate conduct
2. ***Remedial/corrective actions.*** After review of the relevant record, the Chairman (or the Vice Chairman, as appropriate) may take disciplinary or other remedial/corrective action, if appropriate, in accordance with Federal regulations and Department policies. Examples of possible actions include, but are not limited to:
  - admonition
  - reprimand
  - suspension
  - removal
  - training
3. ***Referral to another agency.*** Depending on the nature of the complaint and the findings of the Board's investigation, the complaint may be referred to OIG, OPR, or other authority.
4. ***Case reassignment.*** Based on the results of the investigation, the Chairman may reassign a case, group of cases, or class of cases from the Board Member who is the subject of the inquiry.

### C. Notice to Complainant

Where there is an identifiable complainant, he or she may be notified in writing once action is taken and/or the matter is closed. Such notification, however, may not violate the privacy rights of the Board Member.

**D. Notice to Board Member**

If a complaint is dismissed, the Board Member may be notified of the disposition, consistent with the Privacy Act.

**E. Notice to the Director**

Where appropriate, the Chairman or ELR will advise the Director of the final disposition of the complaint and the consequences of the disposition for the Board Member.

**F. Recordation**

The final disposition of the complaint will be recorded on the complaint log and in the complaint record. If disciplinary action is taken, that information will be included on the complaint log and in the complaint record.