



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

*5107 Leesburg Pike, Suite 2545
Falls Church, Virginia 22041*

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 00-02: Attorney Discipline

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I. Introduction

On July 27, 2000, a revised attorney discipline procedure became effective. See 65 FR 39513 (June 27, 2000). This new process has some significant differences from the former attorney discipline procedures. The grounds for discipline have been revised. More importantly, the attorney discipline procedures have been revamped. The EOIR Office of General Counsel (EOIR OGC) may now investigate and bring attorney discipline charges against practitioners who practice before the Immigration Court. A practitioner who has been issued a Notice of Intent to Discipline, may request a hearing before an Immigration Judge by filing an answer with the Board of Immigration Appeals. Upon receipt of the answer, the Board will forward the case to the Office of the Chief Immigration Judge to assign the case to an Immigration Judge. The Immigration Judge assigned to the case will select a hearing site for the attorney discipline hearing and then conduct a hearing in an Immigration Court.

II. Filing of Complaints

Any person, including an Immigration Judge and any other employee of the Immigration Court, may file a complaint against a practitioner who appears in Immigration Court. Complaints must be filed with the EOIR OGC, attention Bar Counsel. See 8 C.F.R. § 3.104(a)(1). Any complaints must be in writing and state in detail the information which is the basis of the complaint, including, but not limited to, the name of the complainant and the practitioner, the nature and date(s) of the conduct or behavior, the individuals involved, and the harm caused to the complainant. See id. A complaint cannot be made telephonically with EOIR OGC. Complaints can be made by submitting Form EOIR-44 (Immigration Practitioner Complaint), a letter, or an E-mail.

III. Initiation of Attorney Discipline Proceedings

An attorney discipline proceeding is initiated by the filing of a Notice of Intent to Discipline (NID) with the Board of Immigration Appeals (BIA). See 8 C.F.R. § 3.105(a). Prior to issuing a NID, the EOIR OGC may issue warning letters and admonitions and may enter into agreements in lieu of discipline. See 8 C.F.R. § 3.104(c). The EOIR OGC may file a NID based on a practitioner's conduct before the Immigration Courts or the BIA. The Office of General Counsel for the Immigration and Naturalization Service (INS OGC) may file a NID with the BIA based on a practitioner's conduct before the INS.

The regulations provide for an immediate suspension and a summary discipline process. See 8 C.F.R. § 3.103. Only the BIA has the authority to immediately suspend a practitioner from practice based on being found guilty of a serious crime, as defined in 8 C.F.R. § 3.102(h), or for a practitioner who has been disbarred, suspended, or has resigned from a state bar, or a state or federal court. Upon the filing of a petition to immediately suspend a practitioner, the EOIR OGC or the INS OGC shall promptly initiate "summary disciplinary proceedings." See 8 C.F.R. § 3.103(b). The procedures for summary disciplinary proceedings are the same as a regular disciplinary proceeding. See id.

The practitioner has 30 days from the date of service of the NID to file a written answer with the BIA, unless the BIA grants an extension of time. See 8 C.F.R. § 3.105(c)(1). Failure to file a timely written answer with the BIA constitutes an admission of the allegations contained in the NID and the BIA shall issue a final order adopting the recommended disciplinary sanctions in the NID. See 8 C.F.R. § 3.105(d)(1). The practitioner may file a motion to set aside within 15 days of the BIA's final order and must establish that his or her failure to respond was the result of exceptional circumstances. See 8 C.F.R. § 3.105(d)(2). An attorney discipline proceeding can come before the Immigration Court only when the BIA has accepted the practitioner's answer to the NID.

It should be noted that in the answer to the NID, the practitioner must state whether he or she requests a hearing. See C.F.R. § 3.105(c)(3). If the practitioner fails to request a hearing, the opportunity for a hearing will be deemed waived. See id. If a practitioner files an answer to the NID which is accepted by the BIA, but fails to request a hearing, the Immigration Judge assigned to the case shall issue a decision based on the NID and the practitioner's answer.

IV. Assignment of an Immigration Judge

The charging document in an attorney discipline case will consist of the NID and the practitioner's answer to the NID. Upon the filing of the answer to the NID, the BIA Clerk's Office will create a Record of Proceeding (ROP), which is lavender in color. The ROP, which contains the NID and the answer, will be forwarded to the Chief Clerk of the Immigration Court in the Office of the Chief Immigration Judge.

Unless the Director appoints an Administrative Law Judge to be the adjudicating official, the Chief Immigration Judge will appoint an Immigration Judge to be the adjudicating official. See 8 C.F.R. § 3.106(a)(1)(i). The Chief Immigration Judge may also appoint himself, a Deputy Chief Immigration Judge, or an Assistant Chief Immigration Judge. It is important to note that the adjudicating official cannot be the Immigration Judge who filed a complaint against the practitioner and an Immigration Judge cannot be serve as an adjudicating official in a case involving a practitioner who regularly appears before him or her. See id.

Upon the appointment of an Immigration Judge to be an adjudicating official, the Chief Clerk of the Immigration Court will forward the ROP to the Immigration Judge assigned to conduct the hearing.

V. Determining the Hearing Location

Upon receiving the ROP, the Immigration Judge must first decide where the proceedings will be held. The regulation states that the decision on the hearing location must be made with due regard to the location of the practitioner's practice, the convenience of witnesses, and any other relevant factors. See 8 C.F.R. § 3.106(a)(1)(ii). The hearing location must be at an Immigration Court or at a location in which Immigration Judges are regularly detailed.

VI. Conduct of an Attorney Discipline Hearing

Because the regulations do not allow an Immigration Judge to be an adjudicating official if the practitioner regularly appears before him or her, a significant number of attorney discipline cases will be heard by Immigration Judges who sit in a different Immigration Court from the hearing site of the attorney discipline proceeding. The traditional notion that the record of proceeding should be located at the Immigration Court where the proceeding takes place will not, therefore, apply. The record of proceeding will remain with the Immigration Judge assigned to the case, regardless of the hearing location. In addition, the legal technician, assigned to the Immigration Judge, may enter information into the ACCESS system concerning the attorney discipline case and send out hearing notices.

An attorney discipline hearing must be conducted pursuant to the procedures found at 8 C.F.R. part 3, subpart C and 8 C.F.R. § 240.9 and shall be open to the public. See 8 C.F.R. § 3.106(a)(1)(v). The proceedings must be taped. The practitioner may be represented by counsel who must file Form EOIR-28. The revised version of Form EOIR-28 has a box to specify that a representative is appearing in attorney discipline proceedings.

Immigration Judges may conduct telephonic and televideo hearings. See 8 C.F.R. § 3.25(c). If the Immigration Judge would be required to travel to the hearing site to conduct the hearing, the Immigration Judge is encouraged to conduct the initial hearing or any subsequent status hearings by telephone or televideo.

If the practitioner fails to appear at the hearing, the Immigration Judge shall proceed in absentia. See 8 C.F.R. § 3.106(a)(2). The practitioner may file a motion to set aside the in absentia order within 15 days of the date of the final order. The standard for granting a motion to set aside is based on exceptional circumstances beyond the practitioner's control.

VII. Immigration Judge's Decision

At the conclusion of the hearing, the Immigration Judge may render an oral or a written decision. The Immigration Judge must decide whether the INS or EOIR Office of General Counsel has sustained its burden of establishing each of the grounds for discipline enumerated in the NID by clear, unequivocal, and convincing evidence. See 8 C.F.R. § 3.106(a)(1)(iv). Any grounds for discipline set forth in the NID that have not been established by clear, convincing, and unequivocal evidence shall be dismissed. See 8 C.F.R. § 3.106(b). If the Immigration Judge determines that the burden has been met, he or she must sustain the charge and decide on a form of punishment. The punishment can be expulsion, suspension, public or private censure, or other sanctions deemed appropriate. See 8 C.F.R. § 3.101(a). Regardless of whether the Immigration Judge issues a written or an oral decision, he or she must fill out and sign the attached minute order. See attachment A.

Upon issuing the decision, the parties must be advised that in order to perfect an appeal, the BIA must receive Form EOIR-45 within 30 days after the Immigration Judge's decision or 30 days after the Immigration Judge's written decision was mailed. The Immigration Judge's decision will be final if both parties waive appeal or the party who waived appeal fails to file an appeal with the BIA.

VIII. Disposition of the Record of Proceeding

During the pendency of the case, the ROP will be housed in the court from which the Judge was assigned.

If an appeal is filed with the BIA, the BIA Clerk's Office will request the file. If no appeal is filed, the Immigration Court should forward the ROP to the Chief Clerk of the Immigration Court. The closed files will be housed by EOIR OGC.

If there are any questions concerning the attorney discipline process, please contact Loreto Geisse, Counsel to the Chief Immigration Judge at (703)305-1247.

Michael J. Creppy
Chief Immigration Judge

IMMIGRATION COURT
[ADDRESS]

In the Matter of:

Case No: U00-001

TEST CASE

Practitioner

IN DISCIPLINARY PROCEEDINGS

On Behalf of the Applicant

On Behalf of the INS/EOIR OGC

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) (fill in the enumerated charges) 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
- Practitioner shall be suspended from practice before:
- The Board of Immigration Appeals and the Immigration Courts
 - The Immigration and Naturalization Service
 - Both
- Until _____
- Practitioner shall be publically/privately censured

Other appropriate disciplinary sanction

-

-

Date:

 Immigration Judge

APPEAL: WAIVED/RESERVED
APPEAL DUE BY:

-
CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: PRACTITIONER PRACTITIONER'S ATT/REP INS/EOIR
DATE: _____ BY: COURT STAFF _____

“Attachment”