

**PROFESSIONAL CONDUCT FOR
PRACTITIONERS: RULES AND
PROCEDURES**

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Professional Conduct For Practitioners:
Rules and Procedures

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Objectives:

After this session, you should be able to:

1. Identify actions or behaviors of a practitioner that violate rules of professional conduct.
2. Identify possible sanctions that may be taken against a practitioner who violates rules of professional conduct.
3. Identify the sources of bar complaints filed with the Office of General Counsel.
4. Explain the procedures for filing a complaint against a practitioner with the Office of General Counsel.
5. Locate a listing of practitioners who have been subject to discipline by EOIR.
6. Identify individuals at the Office of General Counsel who you can contact for information on practitioner discipline.

Attorney Discipline Program

Professional Conduct for Practitioners Rules and Procedures

United States Department of Justice
Executive Office for Immigration Review

4/16/2009

Attorney Discipline Program

Authority

- 8 U.S.C. 1362 Right to Counsel
 - In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.
- 8 CFR 1003.0(e)(1) Professional Standards
 - The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for attorneys and accredited representatives under subpart G of this part.

Attorney Discipline Program

History

- Program originated with INS
- Inspector General's Report (May 1994) recommended transferring the program to EOIR
- Proposed Rule published January 20, 1998
- 500 Public Comments were received
- Final Rule was published June 27, 2000, and was effective July 27, 2000
- Amended Rule published July 30, 2008
- 4 Public Comments were received
- Final Rule published December 18, 2008, and was effective on January 20, 2009

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Grounds for Discipline

“things you shouldn’t do...”

- Charge grossly excessive fees
- Make false statements of material law or fact
- Solicit professional employment
- Become subject to final order of suspension or disbarment by state or federal court
- Make false or misleading communication about qualifications/services
- Engage in contumelious/obnoxious conduct
- Be convicted of serious crime
- Engage in frivolous behavior
- Engage in ineffective assistance of counsel
- Repeatedly fail to appear for hearings in timely manner
- Assist any person in unauthorized practice of law

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NEW RULE

8 C.F.R. § 1003

- New Grounds of Misconduct (8 C.F.R. § 1003.102)
 - Conduct Prejudicial to the Administration of Justice
 - Competence
 - Scope of Representation
 - Diligence
 - Communication
 - Candor Toward the Tribunal
 - Notice of Entry of Appearance
 - Repeated Filings Indicating a Substantial Failure to Competently and Diligently Represent the Client

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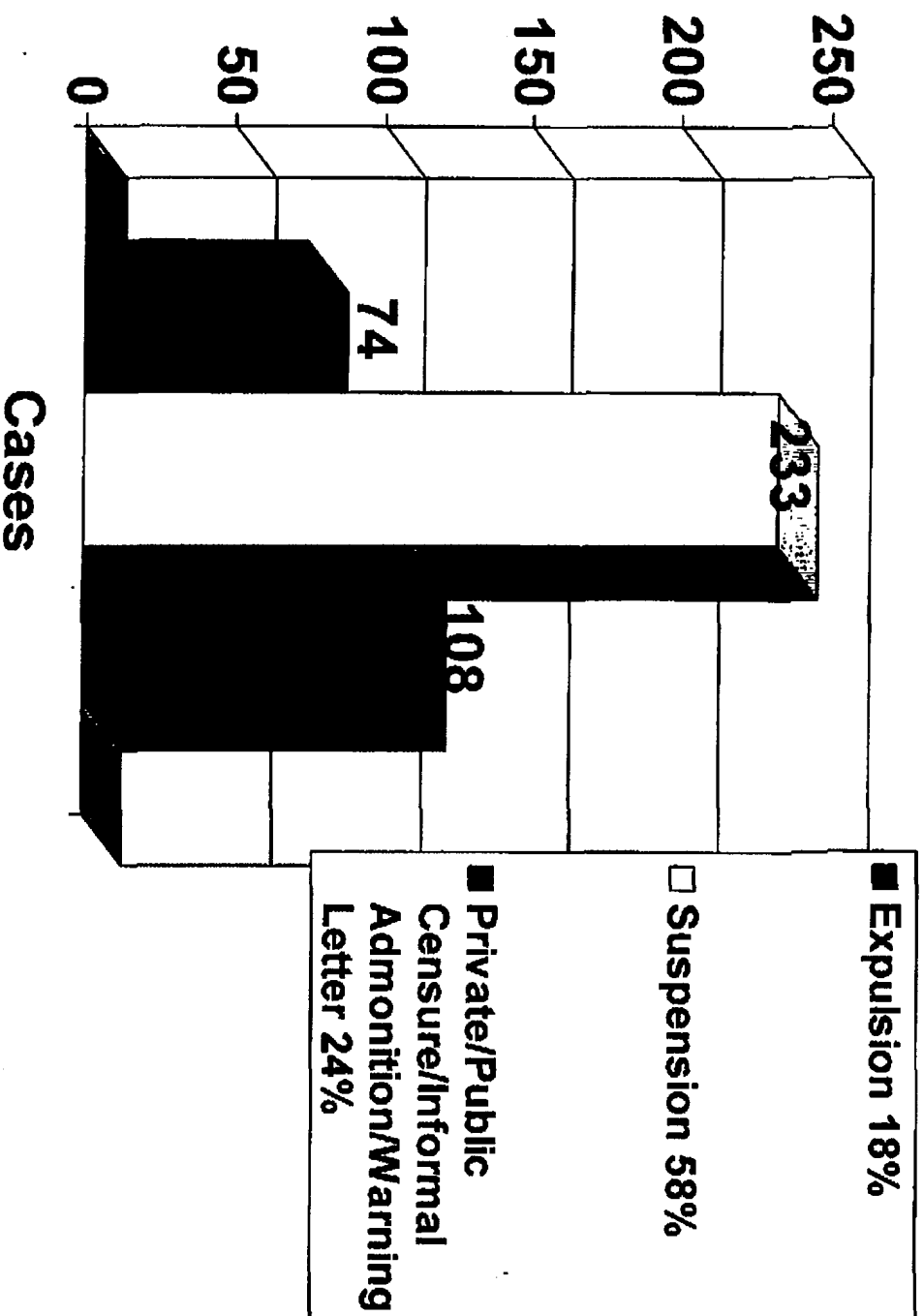
Sanctions

“and if you do...”

- Expulsion
- Suspension
- Public censure
- Private censure
- Informal admonition
- Agreement in lieu of discipline
- Warning letter

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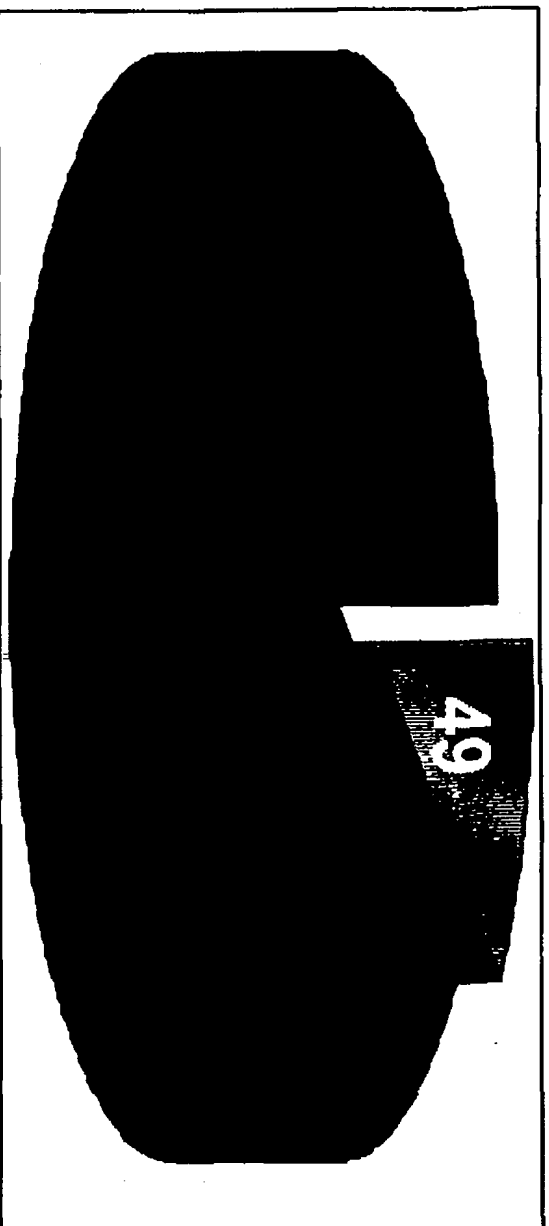
Types of Sanctions



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Reinstatements



■ Reinstated - 12%

Total Disciplined - 415

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Sources of Complaints

- Clients
- Attorneys
- Immigration Judges
- State Bars
- Department of Homeland Security

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Filing a Complaint

“Who do you run to for help and how...”

➤ EOIR-FORM – 44



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Types of Disciplinary Cases

- *Reciprocal*: previous discipline by state or federal court = Immediate Suspension
- *Criminal conviction*: convicted or pled guilty to serious crime = Immediate Suspension
- *Original*: initial complaint filed with EOIR

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Investigation

“Who did what to whom and when...”

- Preliminary inquiry report
- Certified documents
- Request practitioner's response
- Determination

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Notice of Intent to Discipline

“What happens now...”

- Allegation
- Rule violation
- Serious misconduct
- Recommended discipline
- 30 days to file an answer
- Default action

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Filing an Answer

“Do you request a hearing? ...”

- Adjudicating Official appointed
- Time and place of hearing is scheduled
- Notification of the hearing is sent

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Hearing

“Your day in court...”

- Reciprocal proceedings – rebuttable presumption as to culpability – Selling v. Radford factors
- Criminal conviction – only issue is type of sanction
- At the hearing:
 - Witnesses
 - Documents
 - Testimony of practitioner
- Decision

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Appeal Process

“How do I appeal the decision? ...”

- 30 days to file Notice of Appeal with the BIA (Form EOIR-45)
- Transcripts and briefing schedule is sent
- Oral argument (if granted)
- Final administrative order
- Judicial review?

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BIA Precedent Decisions – Pre-rule

- Matter of Bogart 15 I&N Dec. 552 (BIA, AG 1976)
- Matter of Kodan 15 I&N Dec. 739 (BIA, AG 1976)
aff'd, 564 F. 2d 228 (7th Cir. 1977)
- Matter of Solomon 16 I&N Dec. 388 (BIA, AG 1977)
- Matter of De Anda 17 I&N Dec. 54 (BIA, AG 1979)
- Matter of Sparrow 20 I&N Dec. 920 (BIA 1994)

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BIA Precedent Decisions – Post-rule

- Matter of Gadda, 23 I&N Dec. 645 (BIA 2003)
Reciprocal discipline – disbarred in California - expelled by BIA
- Matter of Ramos, 23 I&N Dec. 843 (BIA 2005)
Reciprocal discipline – disbarred in Florida - expelled by BIA
- Matter of Truong, 24 I&N Dec. 52 (BIA 2006)
Reciprocal discipline – disbarred in New York - suspended for 7 years by BIA
- Matter of Shah, 24 I&N Dec. 282 (BIA 2007)
Original discipline – false statement of material fact or law
AO imposed 6 month suspension – BIA affirmed
- Matter of Krivonos, 24 I&N Dec. 292 (BIA 2007)
Reinstatement petition denied
- Matter of Jean-Joseph, 24 I&N Dec. 294 (BIA 2007)
Reinstatement petition denied
- Matter of Rosenberg, 24 I&N Dec. 744 (BIA 2009)
Motion to set aside denied

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List of Disciplined Practitioners

➤ www.USDOJ.gov/EOIR/profcond/chart.htm

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Future of the Program

“Where are we going...”

- Educate the public
- Outreach to practitioners
- Electronic filing
- Access to DAR (Digital Audio Recording)
- Adjudicating Official Corps

Attorney Discipline Program

Attorney Discipline Team

- Jennifer Barnes (Bar Counsel)
- Scott Anderson (Deputy Bar Counsel)(b) (6)
- Shelia Williams (Program Specialist) (b) (6)

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Executive Office of Immigration Review

Office of the General Counsel

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Falls Church, Virginia 22041

(703) 305-0470 Fax (703) 305-0443

www.USDOJ.gov/EOIR

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Question 1

You have a Master Calendar hearing in five minutes, and you just heard through the grapevine that one of the attorneys who is scheduled to appear before you has been suspended by the state bar. When the attorney appears for the case, he makes no mention of the suspension. Do you: (*identify all that apply*)

- A) Make no mention of the suspension, either
- B) Advise the attorney that he cannot represent the alien in today's Master Calendar hearing
- C) Alert the state bar of the attorney's appearance and notify Bar Counsel of the suspension and subsequent appearance, or
- D) Clarify his status, advise the alien that his attorney has been suspended and inquire as to whether he wants the attorney to continue to represent him if not, give him a continuance

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Question 2

Which of the following EOIR-28s is not acceptable by the court:

“I am a member in good standing of the bar of the highest court of: ”

(There may be more than one correct answer)

- A) American Samoa
- B) Guam
- C) Federated States of Micronesia
- D) United States Supreme Court
- E) Duckwater Shoshone Indian Tribe

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Question 3

At 12:45 pm, attorney Joe Schmoe calls the court to tell you that he is running late, really late, and that there's no way he can be there by 1:00 for his case – best case scenario is that he can get there by 1:30. This case has been set for over a year but this isn't the first time Attorney Schmoe has arrived late to court. What do you do now?

- A) Wait for him
- B) Proceed without him
- C) Continue the case
- D) Find another attorney in the hall to represent the alien until Attorney Schmoe shows up
- E) Take him off the case
- F) Refer him to Bar Counsel

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Question 4

Attorney Jane Schmoe appears for a Master Calendar hearing instead of her husband, Attorney Joe Schmoe, who is in trial in state court down the street. Jane Schmoe tells you that she is only appearing for today's hearing on behalf of the client and that her husband is really the immigration lawyer for their firm. Do you:

- A) Allow her to appear without submitting an E-28
- B) Allow her to appear but only if she submits an E-28
- C) Refuse to allow her to appear and proceed with the case
- D) Refuse to allow her to appear and continue the case
- E) Have her sign her husband's E-28

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Question 5

Attorney Joe Schmoe has just about pushed you to the breaking point. He constantly interrupts you, and consistently attacks the government attorney. He objects to every question asked on cross-examination and is disruptive to the point where it may be prejudicial to the alien. His most recent antic involves his declaration that the immigration laws must not apply in your courtroom. Do you:

- A) Call security and have him escorted out of your courtroom, then proceed without him
- B) Turn off the tape and read him the Riot Act
- C) Keep the tape running and warn him to maintain his professional decorum or risk referral to the appropriate disciplinary authorities for contemptuous conduct
- D) Call security to escort you out of your courtroom and let them proceed without you

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Question 6

Ms. Martha Stewart Little appears in your courtroom for the first time on a master calendar case. You've never met Ms. Little, and she doesn't seem to be familiar with immigration court protocol. When you ask her for her E-28, she gives you a blank stare. What do you do next?

- A) Hand her an E-28 and wait for her to fill it out
- B) Inquire as to her authority to represent aliens before the court
- C) Trail her case to the end of the calendar for further inquiry
- D) Tell her to make sure she brings a properly completed E-28 to court next time