Discipline of Immigration Practitioners: What To Expect If Accused of Violating the Federal Regulations Governing Professional Conduct

On March 22, 2025, the Trump administration issued a Presidential Memorandum titled "Preventing Abuses of the Legal System and the Federal Court." The memorandum specifically targets immigration practitioners and asserts, without basis, that "the immigration bar, and powerful Big Law pro bono practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies." In this memo, the president directs the attorney general and the secretary of homeland security to prioritize enforcement of federal regulations governing attorney conduct and discipline.

While this directive should not deter practitioners from advocating zealously on behalf of their clients, practitioners should be aware of and understand the disciplinary process in the unfortunate event that they are accused of misconduct. This practice advisory explains the professional conduct rules for immigration practitioners and the rules governing the corresponding disciplinary procedures.

Disciplinary Authority

Attorney practitioners are subject to discipline for breaches of ethical duties under the code of professional responsibility in the state or jurisdiction in which they are licensed. In addition, immigration practitioners (including attorneys and Accredited Representatives) practicing before the Department of Homeland Security (DHS) and the Department of Justice (DOJ) are subject to professional conduct rules and potential discipline under various federal regulations. The Presidential Memorandum warns of heightened discipline of practitioners under these federal regulations.

Regulations at 8 CFR § 292.3 contain rules and procedures relating to practicing immigration law before DHS and regulations at 8 CFR § 1003 contain professional conduct rules and procedures relating to practicing before the Executive Office for Immigration Review (EOIR), which is part of the DOJ. DHS regulations governing practitioner conduct allow for discipline of any practitioner if it is "in the public interest to do so." In defining when it is in the public interest to discipline a practitioner, the regulations refer to the grounds of discipline listed by EOIR at 8 CFR § 1003.102. As such, the bases for allowable discipline are largely the same for DHS and EOIR practice. Notably, however, both the DHS and EOIR regulations emphasize that the grounds for discipline enumerated "do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." 8 CFR §§ 292.3(b), 1003.102.

Nevertheless, there are many grounds for discipline explicitly provided under the regulations, including:

- Knowingly or with reckless disregard making a false statement or willfully misleading, misinforming, threatening, or deceiving any person.
- Engaging in rude, insulting, or obnoxious conduct that would constitute contempt of court.
- Knowingly or with reckless disregard falsely certifying a copy of a document as being true and complete.
- Engaging in frivolous behavior.
- Assisting a person other than a practitioner to practice law.
- Engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process.
- Failing to provide competent and diligent representation to a client.
- Assisting in the performance of an activity that constitutes the unauthorized practice of law.
- Repeatedly failing to submit a notice of entry of appearance.

For a full list of the disciplinary grounds, consult 8 CFR § 1003.102.

The Presidential Memorandum focuses on immigration practitioners who "coach clients to conceal their past or lie about their circumstances when asserting their asylum claims." Therefore, immigration practitioners who practice asylum law will be at a heightened risk of being accused of misconduct related to false statements, frivolous behavior, or otherwise engaging in conduct that is prejudicial to the administration of justice.

In addition to the above regulations, 8 CFR § 1292.19 contains rules specifically relating to complaints against DOJ Recognized Organizations and DOJ-Accredited Representatives. Under this rule, *any individual* may submit a complaint to EOIR or DHS alleging that a recognized organization or accredited representative has engaged in behavior that is a ground of termination of their recognition or accreditation or behavior that is otherwise contrary to the public interest.

Disciplinary Complaint & Investigation Process

The regulations governing practitioner conduct before DHS and EOIR also establish the disciplinary process. While DHS and EOIR maintain separate disciplinary counsel, the EOIR disciplinary process has been largely adopted by DHS disciplinary counsel, making the procedures similar.

a. EOIR Disciplinary Process

The EOIR disciplinary process beings with a complaint being filed against the practitioner for an alleged violation of a rule set forth in the regulations described above. Anyone can submit a complaint against the practitioner. The complaint must be made in writing and is generally submitted using Form EOIR-44: Immigration Practitioner/Organization Complaint Form.

Upon receipt of all complaints, EOIR's disciplinary counsel will determine if, as alleged, they would violate the rules set forth at 8 CFR §§1003.101-1003.111. The first step in this process is for EOIR's disciplinary counsel to conduct a preliminary inquiry and decide whether to: (1) take no further action; (2) issue a warning letter or informal admonition; (3) enter into an agreement in lieu of discipline; or (4) initiate full disciplinary proceedings by filing a Notice of Intent to Discipline (NID). If the disciplinary counsel determines that it will initiate proceedings by filing an NID, that document will contain the charges, the preliminary report, proposed sanctions, and instructions for filing an answer and requesting a hearing.

A practitioner served with an NID must respond within 30 days of service. Alternatively, they may file a motion to the Board of Immigration Appeals (BIA) for an extension of time no later than three working days before the deadline. The deadline for filing an answer may be extended for good cause shown. In their answer, the practitioner must expressly admit or deny all allegations contained in the NID and must also state whether they are requesting a hearing. **It is extremely important to respond to a NID, as failure to timely respond will result in a default order imposing the proposed discipline in the NID.** *See* 8 CFR § 1003.105.

If the practitioner requests a hearing, they will appear before an immigration judge who will adjudicate the claims after allowing the parties to submit evidence and cross examine witnesses. *See* 8 CFR § 1003.106. Practitioners may be represented in these proceedings, and it may be in their best interest to hire disciplinary defense counsel if the complaint should result in a NID. Ideally, disciplinary defense counsel will be one that is versed in immigration law and discipline procedure. Many disciplinary defense counsel only have experience defending attorneys before their state boards of professional conduct.

Following a disciplinary hearing, the judge will issue a decision either recommending dismissal of the charges or adopting, modifying, or otherwise amending the proposed discipline. The decision is final unless it is appealed to the BIA. To appeal the disciplinary decision of the immigration judge, the practitioner must file with the BIA Form EOIR-45: Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.

Generally, practitioners may continue to practice during disciplinary proceedings. They may, however, be subject to immediate suspension if they: (1) have been found guilty of or pleaded no contest to a serious crime, as defined in 8 CFR § 1003.102(h); (2) have been suspended or disbarred by the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or (3) have resigned from practice while a disciplinary investigation or proceeding was pending. 8 CFR § 1003.103.

b. DHS Disciplinary Process

As explained above, the DHS disciplinary process is similar to the EOIR process. First, when DHS disciplinary counsel receives a complaint of alleged misconduct against a practitioner, it will initiate a preliminary inquiry. Depending on the nature of the allegations, disciplinary counsel may offer the practitioner the opportunity to provide a response to the complaint or to participate in

the preliminary inquiry, which would potentially allow the practitioner to avoid being served a NID.

If they are satisfied that formal discipline is not warranted, the DHS disciplinary counsel may resolve the process at the preliminary inquiry stage by issuing warning letters, entering into agreements in lieu of discipline, or even closing out the process at the preliminary inquiry stage.

If the preliminary inquiry reveals "sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in 8 CFR 1003.102," disciplinary counsel will file a NID. The rules then specify that the practitioner must answer the NID in accordance with 8 CFR § 1003.105 and impose the same NID procedure as EOIR, described above. A practitioner served with a NID, therefore, has 30 days to respond or submit a timely motion for an extension of time to answer. They must expressly admit or deny all allegations contained in the NID and state in the answer whether they are requesting a hearing. Again, **it is extremely important to respond to a NID, as failure to timely respond will result in a default order imposing the proposed discipline in the NID.** Hearings conducted under the DHS disciplinary process also follow the EOIR disciplinary process under 8 CFR § 1003.106. An immigration judge will give the parties an opportunity to present witnesses, introduce evidence, and cross-examine any witnesses offered by disciplinary counsel in support of the complaint.

Discipline for the Unauthorized Practice of Immigration Law

As noted above, a practitioner may be disciplined for assisting in the unauthorized practice of immigration law. In light of potential heightened scrutiny of practitioners under the Presidential Memorandum, it is important for them to understand who is authorized to practice immigration law and the boundaries of certain practitioners' credentials.

For example, DOJ Accredited Representatives are only authorized to practice immigration law under a DOJ Recognized Organization as long as the organization's recognition and the practitioner's accreditation status remain valid. Additionally, partial accreditation allows individuals to represent clients only before DHS, while full accreditation allows individuals to represent clients before both DHS and EOIR. Since partially Accredited Representatives are limited to practice before DHS, they are not permitted to represent clients in removal proceedings or even *advise* noncitizens on removal defense issues.

For more information, partially Accredited Representatives and their supervisors are encouraged to consult CLINIC's practice advisory: Ethical and Regulatory Boundaries for Partially Accredited DOJ Representatives in Assisting Noncitizens in Immigration Court.

For more information about the authorized practice of immigration law generally, please review CLINIC's practice advisory: Know the Limits: Don't Find Yourself Accidentally Engaging in the Unauthorized Practice of Immigration Law. This advisory explains limited circumstances under which law students, law graduates, and "reputable individuals" may be authorized to practice immigration law.

Conclusion

The Presidential Memorandum, "Preventing Abuses of the Legal System and the Federal Court" falsely alleges widespread and rampant fraud and abuse of the immigration system by immigration practitioners and threatens to discipline them under federal regulations governing their professional conduct. While it is prudent for practitioners to be aware of the risk of discipline and to understand the disciplinary process, practitioners representing noncitizens must nevertheless continue to zealously advocate for their clients in the face of these unjustified attacks. They must also be sure, more than ever, to abide by the various regulations governing practitioner conduct, as well as their state rules of professional conduct, and maintain impeccable records of their efforts. Doing this is imperative for practitioners to protect their ability to continue practicing immigration law before EOIR and DHS in the face of heightened scrutiny by the Trump administration.