

§ 1003.102

8 CFR Ch. V (1–1–23 Edition)

Intent to Discipline and the adjudicating official or the Board grants the motion.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012; 81 FR 92362, Dec. 19, 2016; 87 FR 56259, Sept. 14, 2022]

§ 1003.102 Grounds.

It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law. A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:

(a) Charges or receives, either directly or indirectly:

(1) In the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive. The factors to be considered in determining whether a fee or compensation is grossly excessive include the following: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the attorney or attorneys performing the services.

(2) In the case of an accredited representative as defined in § 1292.1(a)(4) of this chapter, any fee or compensation for specific services rendered for any person, except that an accredited representative may be regularly com-

pensated by the organization of which he or she is an accredited representative, or

(3) In the case of a law student or law graduate as defined in § 1292.1(a)(2) of this chapter, any fee or compensation for specific services rendered for any person, except that a law student or law graduate may be regularly compensated by the organization or firm with which he or she is associated as long as he or she is appearing without direct or indirect remuneration from the client he or she represents;

(b) Bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person (including a party to a case or an officer or employee of the Department of Justice) to commit any act or to refrain from performing any act in connection with any case;

(c) Knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

(d) Solicits professional employment, through in-person or live telephone contact or through the use of runners, from a prospective client with whom the practitioner has no family or prior professional relationship, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain. If the practitioner has no family or prior professional relationship with the prospective client known to be in need of legal services in a particular matter, the practitioner must include the words "Advertising Material" on the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. Such advertising material or similar solicitation documents may not be distributed by any person in or around the premises of any building in which an immigration court is located;

(e) Is subject to a final order of disbarment or suspension, or has resigned while a disciplinary investigation or proceeding is pending;

(f) Knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,

(2) Contains an assertion about the practitioner or the practitioner's qualifications or services that cannot be substantiated. A practitioner shall not state or imply that the practitioner has been recognized or certified as a specialist in immigration or nationality law unless such certification is granted by the appropriate State regulatory authority or by an organization that has been approved by the appropriate State regulatory authority to grant such certification. An accredited representative shall not state or imply that the accredited representative:

(i) Is approved to practice before the immigration courts or the Board, if the representative is only approved as an accredited representative before DHS;

(ii) Is an accredited representative for an organization other than a recognized organization through which the representative acquired accreditation; or

(iii) Is an attorney.

(g) Engages in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding;

(h) Has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia. A serious crime includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful

failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt, or a conspiracy or solicitation of another, to commit a serious crime. A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section;

(i) Knowingly or with reckless disregard falsely certifies a copy of a document as being a true and complete copy of an original;

(j) Engages in frivolous behavior in a proceeding before an immigration court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act, provided:

(1) A practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of a practitioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and is not interposed for any improper purpose.

(2) The imposition of disciplinary sanctions for frivolous behavior under this section in no way limits the authority of the Board to dismiss an appeal summarily pursuant to §1003.1(d);

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board, an immigration judge in an immigration proceeding, or a

Federal court judge or panel, and a disciplinary complaint is filed within one year of the finding;

(l) Repeatedly fails to appear for pre-hearing conferences, scheduled hearings, or case-related meetings in a timely manner without good cause;

(m) Assists any person, other than a practitioner as defined in §1003.101(b), in the performance of activity that constitutes the unauthorized practice of law. The practice of law before EOIR means engaging in *practice* or *preparation* as those terms are defined in §§1001.1(i) and (k);

(n) Engages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process. Conduct that will generally be subject to sanctions under this ground includes any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct;

(o) Fails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners;

(p) Fails to abide by a client's decisions concerning the objectives of representation and fails to consult with the client as to the means by which they are to be pursued, in accordance with paragraph (r) of this section. A practitioner may take such action on behalf of the client as is impliedly authorized to carry out the representation;

(q) Fails to act with reasonable diligence and promptness in representing a client.

(1) A practitioner's workload must be controlled and managed so that each matter can be handled competently.

(2) A practitioner has the duty to act with reasonable promptness. This duty includes, but shall not be limited to, complying with all time and filing limitations. This duty, however, does not preclude the practitioner from agreeing to a reasonable request for a post-

ponement that will not prejudice the practitioner's client.

(3) A practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations. If a practitioner has handled a proceeding that produced a result adverse to the client and the practitioner and the client have not agreed that the practitioner will handle the matter on appeal, the practitioner must consult with the client about the client's appeal rights and the terms and conditions of possible representation on appeal;

(r) Fails to maintain communication with the client throughout the duration of the client-practitioner relationship. It is the obligation of the practitioner to take reasonable steps to communicate with the client in a language that the client understands. A practitioner is only under the obligation to attempt to communicate with his or her client using addresses or phone numbers known to the practitioner. In order to properly maintain communication, the practitioner should:

(1) Promptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished. Reasonable consultation with the client includes the duty to meet with the client sufficiently in advance of a hearing or other matter to ensure adequate preparation of the client's case and compliance with applicable deadlines;

(3) Keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation; and

(4) Promptly comply with reasonable requests for information, except that when a prompt *response* is not feasible, the practitioner, or a member of the practitioner's staff, should acknowledge receipt of the request and advise

the client when a *response* may be expected;

(s) Fails to disclose to the adjudicator legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel;

(t) Repeatedly fails to submit a signed and completed entry of appearance using the appropriate form in compliance with applicable rules and regulations, including 8 CFR 292.4(a), 1003.17, and 1003.38;

(u) Repeatedly drafts notices, motions, briefs, or claims that are filed with DHS or EOIR that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client;

(v) Acts outside the scope of the representative's approved authority as an accredited representative.

(w) Repeatedly fails to sign any pleading, application, motion, petition, brief, or other document prepared, drafted, or filed with DHS or EOIR. The practitioner's signature must be in the practitioner's individual name and must be handwritten or electronically in conformity with the rules and instructions of the applicable system.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008, 81 FR 92362, Dec. 19, 2016; 87 FR 56259, Sept. 14, 2022]

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.

(a) *Immediate Suspension*—(1) *Petition*. The EOIR disciplinary counsel shall file a petition with the Board to suspend immediately from practice before the Board and the Immigration Courts any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in § 1003.102(h), or any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any

Federal court, or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) *DHS petition*. DHS may file a petition with the Board to suspend immediately from practice before DHS any practitioner described in paragraph (a)(1) of this section. See 8 CFR 292.3(c).

(3) *Copy of petition*. A copy of a petition filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner's authority to practice before DHS. A copy of a petition filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board that entry of any order immediately suspending a practitioner before DHS also apply to the practitioner's authority to practice before the Board and Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of an immediate suspension or proposed discipline must be filed with the Board or the adjudicating official.

(4) *Immediate suspension*. Upon the filing of a petition for immediate suspension pursuant to §§ 1003.103(a)(1) or 1003.103(a)(2), together with a certified copy of a court record finding that a practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, or has been disciplined or has resigned, as described in paragraph (a)(1) of this section, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Board, the Immigration Courts, and/or DHS, notwithstanding the pendency of an appeal, if any, of the underlying disciplinary proceeding, pending final disposition of a summary disciplinary proceeding as provided in paragraph (b) of this section. Such immediate suspension will continue until imposition of a final administrative decision. If an immediate suspension is imposed upon a practitioner, the Board may require that notice of such suspension be posted at the Board, the Immigration Courts, or DHS. Upon good cause shown, the Board may set aside such