

**PRESENTED AT**

A Practical Guide to Immigration Removal Proceedings

June 7-8, 2018

Houston, Texas

**Professional Conduct for  
Practitioners before the  
Immigration Court**

**Joseph A. Vail\***

**\*Updated by Michelle L. Saenz-Rodriguez- May 2018**

**PROFESSIONAL CONDUCT FOR PRACTITIONERS  
BEFORE THE IMMIGRATION COURT**

**I) Representation and Appearances**

**Who is qualified to appear before the Executive Office for Immigration Review (Board of Immigration Appeals or Immigration Court) and the Immigration and Naturalization Service?**

**8 C.F.R. 292.1 Representation of others.**

A person entitled to representation may be represented by any of the following:

- (1) Attorneys in the United States - (see § 8 CFR 1.1(f), an attorney licensed and in good standing with the bar of the highest court of any U.S. state, commonwealth, territory or district.)
- (2) Supervised law students with the permission of the immigration judge
- (3) Reputable individuals in limited circumstances
- (4) Accredited representative (accredited by the BIA)
- (5) Accredited official
- (6) Attorneys outside the United States (only in matters outside the geographical confines of the US)

**II) Federal Regulations on Disciplinary Procedures in the Immigration Court - EOIR  
Disciplinary Rules - 8 CFR 1003.101 et seq.**

8 CFR Sec. 1003.1(d)(2)(iii), 1003.1(d)(5), 1003.101-111, 292.3

The following is a summary of the disciplinary rules relating to (non – government) attorneys and representatives who appear before the Executive Office for Immigration Review (EOIR). EOIR is the agency which governs the immigration courts and the Board of Immigration Appeals (BIA), the administrative appellate body which adjudicates appeals from the decisions of the more than 200 immigration judges across the country. As noted above these sanctions do not apply to attorneys representing the Department of Homeland Security (DHS) The issue as to who should be covered by the disciplinary rules has been a controversial one between EOIR, DHS and the private bar. The final rule however makes it clear that government attorneys may not be sanctioned under these rules. Complaints regarding the conduct of DHS attorneys, as well as immigration judges and BIA members, are directed to the Office of Professional Responsibility. 8 CFR 1003.109.

**A) AUTHORITY TO SANCTION 1003.101(a) General Provisions**

The Board of Immigration Appeals (Board or BIA) or an adjudicating official may impose disciplinary sanctions against any practitioner “if it finds it in the public interest to do so”. It is in the “public interest” to do so when a practitioner authorized to appear before the Board and the Immigration Courts has engaged in “criminal, unethical or unprofessional conduct, or frivolous<sup>1</sup> behavior”.

The grounds for sanctions as revised in 2000 are modeled after - and include language similar to - that found in the American Bar Association’s Model Rules of Professional Conduct (1995). (See **Interpreter Releases**, January 26, 1998 article titled: EOIR, INS Publish Rule Governing Professional Conduct for Practitioners 1/26/1998)

## **B) GROUND FOR SANCTIONS – 8 CFR 100 3.102**

The categories enumerated below do not constitute the exclusive grounds for disciplinary sanction. ***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.*** {Emphasis added}

### **1) Grossly Excessive Fees**

Factors used in determining whether fees are excessive include:

- time and labor required
- novelty and difficulty of the legal issue involved
- skill required to perform the legal service properly
- likelihood that acceptance of the case will preclude other employment by the attorney
- fee customarily charged for similar legal services
- amount involved and the results obtained
- time limitations imposed by client or circumstances
- nature and length of the professional relationship with the client
- experience, reputation and ability of the attorney(s) performing the services

### **2) Bribery**

Bribes, coercion, or any attempt at bribery or coercion by any means whatsoever to persuade or force any person to commit (or refrain from committing) any act in connection to a case.

---

<sup>1</sup> The definition of frivolous in this context follows the ABA Model Rules as opposed to the definition of frivolous in the context of asylees.

Asylees are subject to a determination by an immigration judge or the Board that their asylum application is frivolous under 8 C.F.R. 208.20. In this section of the Act, an asylum application is frivolous if any of its material elements is deliberately fabricated after the applicant has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. Such a finding shall not preclude an alien from seeking withholding of removal.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Professional Conduct for Practitioners before the Immigration Court

Also available as part of the eCourse

[Hooked on CLE: October 2018](#)

First appeared as part of the conference materials for the  
2018 A Practical Guide to Immigration Removal Proceedings session  
"Ethical Issues and Self Care in Immigration Law"