

(2) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline. Every allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced. The practitioner may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner shall also state in the answer whether he or she requests a hearing on the matter. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) *Failure to file an answer.* (1) Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced.

(2) Upon such a default by the practitioner, the Office of the General Counsel shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the recommended disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct, or would otherwise be unwarranted or not in the interest of justice. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on

the Office of the General Counsel of EOIR, provided:

(i) Such a motion is filed within 15 days of the date of service of the final order; and

(ii) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

§ 3.106 Hearing and disposition.

(a) *Hearing—(1) Procedure.* (i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge or in the interest of efficiency, the Director of EOIR may appoint an Administrative Law Judge as an adjudicating official. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which he or she is also the complainant. An Immigration Judge shall not serve as the adjudicating official in any case involving a practitioner who regularly appears before him or her.

(ii) Upon the practitioner's request for a hearing, the adjudicating official shall designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. Such notice shall be served upon the practitioner by personal service as defined in § 103.5a of this chapter. The practitioner shall be afforded adequate time to prepare his or her case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or if the practitioner has not filed an answer, subject to final approval by the Board.

(iii) The practitioner may be represented at the hearing by counsel at no expense to the government. Counsel for the practitioner shall file a Notice of Entry of Appearance on Form EOIR-28 in accordance with the procedures set forth in this Part 3. At the hearing, the practitioner shall have a reasonable opportunity to examine and object to evidence presented by the government, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the government.

(iv) In rendering a decision, the adjudicating official shall consider the following: the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer and any supporting documents, and any other evidence presented at the hearing (or, if the practitioner files an answer but does not request a hearing, any pleading, brief, or other materials submitted by counsel for the government). Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear, unequivocal, and convincing evidence.

(v) The record of the hearing, regardless of whether the hearing is held before an Immigration Judge or an Administrative Law Judge, shall conform to the requirements of 8 CFR part 3, subpart C and 8 CFR 240.9. Disciplinary hearings shall be conducted in the same manner as Immigration Court proceedings as is appropriate, and shall be open to the public, except that:

(A) Depending upon physical facilities, the adjudicating official may place reasonable limitations upon the number of individuals in attendance at any one time, with priority being given to the press over the general public, and

(B) For the purposes of protecting witnesses, parties, or the public interest, the adjudicating official may limit attendance or hold a closed hearing.

(2) *Failure to appear at the hearing.* If the practitioner fails to appear at the hearing, the adjudicating official shall then proceed and decide the case in the absence of the practitioner, in accordance with paragraph (b) of this section, based upon the available record, including any additional evidence or arguments presented by EOIR or the

Service at the hearing. In such a proceeding, the Office of the General Counsel of EOIR or the Office of the General Counsel of the Service shall submit to the adjudicating official proof of personal service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner shall be precluded thereafter from participating further in the proceedings. Any final order imposing discipline entered in absentia shall be a final order, but shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A final order of discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner may file a motion to set aside the order, with service of such motion on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service), provided:

(i) Such a motion is filed within 15 days of the date of issuance of the final order; and

(ii) His or her failure to appear at the hearing was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(b) *Decision.* The adjudicating official shall consider the entire record, including any testimony and evidence presented at the hearing, and, as soon as practicable after the hearing, render a decision. If the adjudicating official finds that one or more of the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear, unequivocal, and convincing evidence, he or she shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall

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be specified. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear, unequivocal, and convincing evidence shall be dismissed. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, nor does it take effect during the pendency of an appeal to the Board as provided in § 3.6.

(c) *Appeal.* Upon the issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a *de novo* review of the record. Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in this Part 3, and must use the Form EOIR-45. The decision of the Board is a final administrative order as provided in § 3.1(d)(2), and shall be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A copy of the final administrative order of the Board shall be served upon the Office of the General Counsel of EOIR and the Office of the General Counsel of the Service. If disciplinary sanctions are imposed against a practitioner (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or the Service for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

(d) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of EOIR may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a prac-

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itioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of EOIR shall transmit notice of all public discipline imposed under this rule to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

§ 3.107 Reinstatement after expulsion or suspension.

(a) *Expiration of suspension.* Upon notice to the Board, a practitioner who has been suspended will be reinstated to practice before the Board and the Immigration Courts or the Service, or before all three authorities, once the period of suspension has expired, provided that he or she meets the definition of attorney or representative as set forth in § 1.1(f) and (j), respectively, of this chapter. If a practitioner cannot meet the definition of attorney or representative, the Board shall decline to reinstate the practitioner.

(b) *Petition for reinstatement.* A practitioner who has been expelled or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative as set forth in § 1.1(f) and (j), respectively, of this chapter. A copy of such petition shall be served on the Office of the General Counsel of EOIR. In matters in which the practitioner was ordered expelled or suspended from practice before the Service, a copy of such petition shall be served on the Office of the General Counsel of the Service.

(1) The practitioner shall have the burden of demonstrating by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or the Service, or before all three authorities, and that his or her reinstatement will not be detrimental to the administration of justice. The Office of the General Counsel