

8 CFR 1003.104

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Code of Federal Regulations > TITLE 8 -- ALIENS AND NATIONALITY > CHAPTER V -- EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE > SUBCHAPTER A -- GENERAL PROVISIONS > PART 1003 -- EXECUTIVE OFFICE FOR IMMIGRATION REVIEW > SUBPART G -- PROFESSIONAL CONDUCT FOR PRACTITIONERS -- RULES AND PROCEDURES

§ 1003.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) Filing complaints --

(1)Practitioners authorized to practice before the Board and the Immigration Courts. Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the EOIR disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the EOIR disciplinary counsel using the Form EOIR-44. The EOIR disciplinary counsel shall notify DHS of any disciplinary complaint that pertains, in whole or part, to a matter before DHS.

(2)Practitioners authorized to practice before DHS. Complaints of criminal, unethical, or unprofessional conduct, or frivolous behavior by a practitioner who is authorized to practice before DHS shall be filed with DHS pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b)Preliminary inquiry. Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in the disciplinary counsel's discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c)Resolution reached prior to the issuance of a Notice of Intent to Discipline. The EOIR disciplinary counsel, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d)Referral of complaints of criminal conduct. If the EOIR disciplinary counsel receives credible information or allegations that a practitioner has engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney and, if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency. In such cases, in making the decision to pursue disciplinary sanctions, the EOIR disciplinary counsel shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[5 U.S.C. 301](#); [6 U.S.C. 521](#); [8 U.S.C. 1101](#), 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; [28 U.S.C. 509](#), 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, *111 Stat. 2196-200*; sections 1506 and 1510 of Pub. L. 106-386, *114 Stat. 1527-29, 1531-32*; section 1505 of Pub. L. 106-554, *114 Stat. 2763A-326 to -328*.

History

[[65 FR 39513, 39528](#), June 27, 2000; redesignated at [68 FR 9824, 9830](#), Feb. 28, 2003; [73 FR 76914, 76924](#), Dec. 18, 2008; [81 FR 92346, 92362](#), Dec. 19, 2016]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[73 FR 76914, 76924](#), Dec. 18, 2008, amended this section, effective Jan. 20, 2009; [81 FR 92346, 92362](#), Dec. 19, 2016, revised paragraph (b), effective Jan. 18, 2017.]

Case Notes

LexisNexis® Notes**Case Notes Applicable to Entire Part**[Part Note](#)

[Gadda v. Ashcroft, 2001 U.S. Dist. LEXIS 20857](#) (ND Cal Dec. 7, 2001).

Overview: *Attorney's due process rights were not violated by order suspending him from practicing before immigration courts before finalization of disbarment recommendation of the Board of Immigration Affairs by the California State Supreme Court.*

Former 8 CFR 3.104 redesignated as [8 CFR 1003.104](#)

- Regulations provide procedures for the filing of complaints with the Executive Office for Immigration Review and the Immigration and Naturalization Service by individuals alleging unprofessional conduct by practitioners who are authorized to practice before those bodies. 8 C.F.R. §§ 3.104, [292.3\(d\)](#). Both summary proceedings and disciplinary proceedings initiated by the filing of a complaint by an individual are conducted in accordance with the procedures set forth in 8 C.F.R. §§ 3.105 and 3.106 (allowing the practitioner to file an answer and setting forth hearing and disposition). [Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

Other regulations issued by the Department of Justice appear in title 4, chapter II, title 21, chapter II, and title 28, chapters I, III, and V.

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