

ETHICS IN REMOVAL PROCEEDINGS

By Melissa Lujan

Practicing Across State Lines

Most immigration attorneys will find themselves practicing law outside of the State of Oklahoma at some point whether it be attending a USCIS interview for a client in another state or advocating with a CBP office at a port of entry. Those that practice removal proceedings may even find themselves practicing law outside of the state on a regular basis. The ABA Model Rules of Professional Conduct Rule 5.5 provides the circumstances in which an attorney may practice outside of their jurisdiction such as when authorized by federal law. Oklahoma has adopted the model rules, but in states that have not, immigration attorneys must review those states' rules on practicing in another jurisdiction to ensure that one does not commit the unauthorized practice of law. Under federal Immigration law attorneys are permitted to practice before immigration courts, the Board of the Immigration Appeals (BIA), U.S. Citizenship and Immigration Services (USCIS), and the Department of Homeland Security (DHS) in any state if they are in good standing in one state and not disbarred or suspended from the practice of law.¹ Therefore, Oklahoma attorneys may practice in another jurisdiction if it is related to the practice of immigration law.

In addition to being familiar with state ethical rules, immigration attorneys must also be familiar with the rules of Professional Conduct for Practitioners promulgated by EOIR.² Immigration attorneys are subject to discipline not only by state bar authorities but also by the Board of Immigration Appeals (the Board) or an adjudicating official.³ Grounds for discipline by EOIR include grossly excessive fees or compensation; making false or misleading statements of material fact or law; solicitation of professional employment through in-person or live contact; criminal activity; engaging in frivolous behavior before the Immigration Court, the Board, or other administrative agencies; engaging in conduct that constitutes ineffective assistance of counsel; failure to provide competent representation; and other grounds.⁴

In general, an immigration attorney should strive to follow both state and federal rules of professional conduct, complying with the rules of the state of licensure, the rules of the state(s) in which the attorney is practicing, and all EOIR and federal rules. However, what should an immigration practitioner do if EOIR or DHS rules conflict with state bar rules?

¹ 8 CFR §292.1 authorizes any attorney as defined in 8 CFR §1.2 to practice law. 8 CFR §1.2 defines an "attorney" as "any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law."

² Professional Conduct for Practitioners—Rules and Procedures, 8 CFR §1003.101 *et seq.*, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=9ac3efd9a95e1a880e309de37c67f6a6&mc=true&node=sp8.1.1003.g&rgn=div6#se8.1.1003_1101 (last visited Mar. 20, 2019).

³ 8 CFR §1003.101.

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