

Professional Misconduct,” which was distributed to all EOIR staff.⁹ Effective January 1, 2019, all EOIR employees are required to report all suspected violations to EOIR disciplinary counsel for investigation within 60 days of the suspected violation.¹⁰ Immigration Judges and members of the BIA are also instructed to inform the disciplinary counsel of suspected ineffective assistance of counsel discovered through review of the record.¹¹ EOIR disciplinary counsel may then decide if such action should then be reported to local state bars.¹² The Director’s authority is derived from 8 CFR §1003.0(e)(1), which provides that “the General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for practitioners and recognized organizations.”¹³ The Board of Immigration Appeals has authority under 8 CFR §1003.101 to discipline any practitioner if it is in the public interest to do so based upon the grounds for discipline under 8 CFR §1003.102. Discipline may include disbarment or suspension from practice before the Board, Immigration Courts, DHS, or all three authorities; public or private censure; or other sanctions deemed appropriate.¹⁴

With the recent implementation of the EOIR Internal Reporting Procedures memorandum, it appears that EOIR has taken a renewed interest in the ethical obligations and effective assistance of counsel. This comes at a time when pressure is at an all-time high in removal defense given the tremendous backlog, aversion to the use of prosecutorial discretion, and changing rules due to opinions coming from all levels of courts as well as the Attorney General. With the former attorney general using terminology like “dirty immigration lawyers,” it would certainly beg the question whether this new focus is meant to have a chilling effect by causing practitioners to take caution in their choice of strategies when challenging rules and decisions, including those decisions issued by the Attorney General.

At a minimum, it is a reminder to those who practice before immigration courts that they are bound to follow not only the rules of their licensing jurisdiction, but also the grounds for discipline before the immigration courts.¹⁵

⁹ EOIR Memorandum, James R. McHenry III “Internal Reporting of Suspected Ineffective Assistance of Counsel and Professional Misconduct” (Dec. 18, 2018), *published on AILA InfoNet at Doc. No. 18121938 (posted Dec. 18, 2018), available at <https://www.justice.gov/eoir/file/1121096/download>* (last visited Mar. 20, 2019).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 8 CFR §1003.0(e)(1).

¹⁴ 8 CFR §1003.101. For a detailed discussion of EOIR disciplinary procedures, *see* Margaret Mikyung Lee, “Legal Ethics in Immigration Matters: Legal Representation and Unauthorized Practice of Law,” Congressional Research Service (Sept. 18, 2009).

¹⁵ *See* Appendix A of “Internal Reporting of Suspected Ineffective Assistance of Counsel and Professional Misconduct.”