

copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(c) *Duty of practitioner to notify EOIR of conviction or discipline.* Any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 3.102(h), or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court, must notify the Office of the General Counsel of EOIR of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a) of this section and other final discipline. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

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

(a) *Filing of 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 Office of the General Counsel

of EOIR. 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 Office of the General Counsel of EOIR using the Form EOIR-44. The Office of the General Counsel of EOIR shall notify the Office of the General Counsel of the Service of any disciplinary complaint that pertains, in whole or in part, to a matter involving the Service.

(2) *Practitioners authorized to practice before the Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Service, shall be filed with the Office of the General Counsel of the Service 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 Office of the General Counsel of EOIR 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 applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the Office of the General Counsel of EOIR determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of EOIR may, in its 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) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of EOIR, 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 Office of the General Counsel of EOIR receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of EOIR shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of EOIR 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.

§ 3.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of EOIR determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 3.102, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(b) *Copy of Notice to the Service; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of the Service. The Office of the General Counsel of the Service may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board or the Immigration Courts also apply to the practitioner's authority to practice before the Service. Proof of service on the practitioner of any request to broaden the scope of the pro-

posed discipline must be filed with the adjudicating official.

(c) *Answer—(1) Filing.* The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. A motion for an extension of time to answer must be received by the Board no later than three (3) working days before the time to answer has expired. A copy of the answer and any such motion shall be served by the practitioner on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service with respect to a Notice of Intent to Discipline issued by the Service).

(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