UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT ("NWIRP"), a nonprofit Washington public benefit corporation; and YUK MAN MAGGIE CHENG, an individual, Plaintiffs, v. JEFFERSON B. SESSIONS III, in his official capacity as Attorney General of the United States; UNITED STATES DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JAMES MCHENRY,[1] in his official capacity as Acting Director of the Executive Office for Immigration Review; and JENNIFER BARNES, in her official capacity as Disciplinary Counsel for the Executive Office for Immigration Review, Defendants.	CASE NO. 2:17-cv-00716

DECLARATION OF JENNIFER BARNES

I, JENNIFER BARNES, Disciplinary Counsel for the U.S. Department of Justice, Executive Office for Immigration Review ("EOIR"), Office of the General Counsel, in Falls Church,

[1]Under Federal Rule of Civil Procedure 25(d), current Acting Director of EOIR James McHenry is substituted for former Director Juan Osuna.

Virginia, do hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Disciplinary Counsel for EOIR. I have served in this role for approximately seventeen years, since July 2000. The regulations governing the role of the Disciplinary Counsel, and the rules and procedures for disciplinary proceedings, are set forth at 8 C.F.R. part 1003, subpart G. These regulations were substantively amended, most recently on December 18, 2008, *see* 73 FR 76914, with the revisions taking effect on January 20, 2009.[2] Prior to that, the authorities of the Disciplinary Counsel were reserved generally to the EOIR Office of the General Counsel, and I exercised those authorities under the internal title "Bar Counsel."

2. I am the first, and to date the only, individual who has the ultimate responsibility for exercising these authorities as Disciplinary Counsel. Presently, no other individual within EOIR exercises this authority as the Disciplinary Counsel. Throughout this declaration, when I refer to actions I took as Disciplinary Counsel, it can be assumed that no one else at EOIR has taken those actions as the Disciplinary Counsel since July 2000 when I assumed the role of Bar Counsel, and presently, Disciplinary Counsel.

Role and Duties of EOIR Disciplinary Counsel

3. In my role as Disciplinary Counsel, I oversee the investigation of complaints involving alleged misconduct by practitioners before EOIR's immigration courts and the Board of Immigration Appeals ("the Board") to determine whether an attorney or representative has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior. My role is analogous to that of a state bar prosecutor in that I am tasked by EOIR with investigating alleged misconduct and determining whether to dismiss complaints, to resolve complaints informally through confidential discipline, or to institute formal disciplinary proceedings.

4. In my role as Disciplinary Counsel, pursuant to 8 C.F.R. § 1003.104(b), I may investigate professional misconduct based on complaints from immigration judges, the Board, other state or federal agencies, or the public, or on my own initiative. In practice, I rarely initiate an investigation without first receiving a complaint from an immigration judge, the Board, other state or federal agencies, or the public. The vast majority of meritorious complaints of practitioner

[2] Prior to that, these regulations were substantively amended on June 27, 2000. *See* 65 FR 39513.

misconduct referred to me come from immigration judges and the Board. *See* Peter Markowitz, *Barriers To Representation For Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 Fordham L. Rev. 541, 563 (2009) ("immigration judges . . . are in many ways best positioned to identify incompetent lawyering"). Immigration judges typically report unethical or unprofessional conduct, or frivolous behavior that they have observed in their courtrooms or in documents filed with the court, and the Board typically reports the same type of misconduct that is observed in filings made with the Board.

5. In practice, I typically focus my investigations, issue informal confidential discipline, and/or initiate formal disciplinary proceedings for conduct taken by an individual practitioner before the immigration courts or the Board—i.e. during an in-person appearance before the immigration courts or the Board, or when a practitioner has signed and completed a Notice of Entry of Appearance form but fails to appear for a scheduled hearing, or when a practitioner has drafted a document ultimately filed with the immigration courts or the Board. Evidence of conduct beyond these parameters is difficult for me to prove and generally is not the goal of EOIR's Attorney Discipline program.

6. In my role as Disciplinary Counsel, I have the authority to informally resolve complaints without the initiation of formal disciplinary proceedings through the issuance of confidential discipline, pursuant to 8 C.F.R. § 1003.104(c). Informal confidential discipline may be in the form of a warning letter or informal admonition, or an agreement with the practitioner in lieu of discipline, and is confidential pursuant to 8 C.F.R. § 1003.108(b).

7. In my role as Disciplinary Counsel, I do not have the authority to impose formal sanctions for violations of the professional conduct rules. Instead, pursuant to regulation, adjudicating officials and the Board have the authority to impose formal disciplinary sanctions upon any practitioner for a finding that he or she has violated the rules of professional conduct "if it is in the public interest to do so," e.g. for criminal, unethical or unprofessional conduct, or frivolous behavior, as set forth in 8 C.F.R. § 1003.102. As described in 8 C.F.R. § 1003.101(a), formal sanctions can include disbarment, suspension, private or public censure, or such other disciplinary sanctions as deemed appropriate.

8. In my role as Disciplinary Counsel, I do not have authority to investigate disciplinary proceedings with respect to any conduct that takes place before the Department of Homeland Security ("DHS"); however, I may refer any complaint I receive about such conduct to

the Disciplinary Counsel for DHS. Additionally, I may join a prosecution initiated by the DHS Disciplinary Counsel so that any sanction that prohibits a practitioner from practice before DHS would equally prohibit the practitioner from practice before the immigration courts and the Board. 8 C.F.R. §§ 1003.110(c), 1003.105(b).

9. I also coordinate with EOIR's Fraud and Abuse Prevention Counsel regarding the discipline of attorneys or accredited representatives who commit, enable, or induce fraud. *See* 8 C.F.R. § 1003.0(e)(2) (directing EOIR's anti-fraud officer to "[s]erve as a point of contact relating to concerns about possible fraud," "[c]oordinate with investigative authorities," and "[n]otify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative."). If a complaint I receive contains allegations of fraud and/or the unauthorized practice of law, I coordinate handling of the complaint with the Fraud and Abuse Prevention Counsel to assess whether individuals are in fact practitioners subject to the EOIR Rules of Professional Conduct, and in light of potential criminal investigations that the Fraud and Abuse Prevention Program might assist.

Procedures and Practices of EOIR Disciplinary Enforcement

10. As Disciplinary Counsel, I manage the Attorney Discipline Program, and am assisted by: the Assistant Disciplinary Counsel; another attorney who spends part of her time working in the Attorney Discipline Program; an investigator; and other support staff. I maintain ultimate authority on behalf of EOIR to investigate complaints of practitioner misconduct, dismiss those complaints, issue informal confidential discipline, and/or institute formal disciplinary proceedings.

11. As Disciplinary Counsel, I oversee the receipt of hundreds of complaints of misconduct each year, with the number of complaints rising in recent years. For example, in calendar year 2015, EOIR received over 400 complaints of practitioner misconduct; in calendar year 2016, EOIR received approximately 600 complaints; and as of May 31, 2017, EOIR has received nearly 400 complaints in calendar year 2017. When a complaint is received, with the assistance of my staff, I log the complaint into a database, and then I conduct a case-by-case preliminary inquiry into each complaint. Upon conclusion of the preliminary inquiry, I determine whether to dismiss the complaint, refer the complaint to another regulatory agency or state bar

authorities,[3] issue informal confidential discipline, reach some other form of resolution, institute formal disciplinary proceedings and/or resolve the issue in some other manner. *See* 8 C.F.R. § 1003.104(c) ("disciplinary counsel, *in its discretion*, may issue warning letters") (emphasis added); *see also* 8 C.F.R. § 1003.105(a) (explaining that formal disciplinary charges may be initiated if there is "sufficient prima facie evidence to warrant charging.").

12. A complaint may merit the issuance of informal confidential discipline only if there is clear and convincing evidence of a violation of the EOIR rules of professional conduct. I consider this discipline to be "informal" because these matters are resolved without the initiation of formal disciplinary proceedings and without formal sanctions to the practitioner, and the final action is confidential pursuant to 8 C.F.R. § 1003.108(b).

13. In my discretion, I may initiate formal disciplinary proceedings if after a preliminary inquiry, there is sufficient prima facie evidence of professional misconduct. Such formal proceedings would be adjudicated before the Board and/or an adjudicating official.

14. If a complaint does not merit disciplinary action, I dismiss it. When a complaint is dismissed, it means that there is no action taken against the practitioner. Dismissals also remain confidential.

15. In light of the volume of complaints received each year, and the Attorney Discipline Program's resources, I generally begin review of a complaint in the order that it is received. For example, it has generally been the Attorney Discipline Program's practice to review a complaint received on January 1 before reviewing a complaint received on February 1.

16. However, a number of factors may affect when I complete the review and take action on a complaint, if necessary. For example, a complaint may be closed earlier or later, depending on the nature and length of an investigation and preliminary inquiry. Moreover, alleged violations of certain rules of professional conduct may require more expeditious review due to the nature of the violation. In my discretion, the alleged violations that are reviewed more expeditiously are violations of: § 1003.102(g) (contempt of court through contumelious or

[3] In fact, I have worked closely with the Washington State Bar Association, including their disciplinary counsel, through both in-person presentations and numerous phone conversations, to coordinate efforts to regulate Washington State attorneys who also practice before EOIR. On numerous occasions, for example, I have instituted reciprocal disciplinary action on behalf of EOIR when the Washington State Bar Association has suspended or disbarred attorneys from the practice of law in the state of Washington. *See, e.g.*, *Matter of Grosvenor Anschell*, D2000-097 (BIA Dec. 21, 2000), *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2014/02/03/Anschell_FinalOrder.pdf; *In re Disciplinary Proceeding Against Anschell*, 69 P.3d 844 (Wash. 2003).

obnoxious conduct); § 1003.102(l) (repeated failures to appear for scheduled hearings); and § 1003.102(t) (failure to submit signed and completed Notice of Entry of Appearance form). I strive to complete review of alleged violations of these rules promptly upon receiving them – instead of in the order that they are received – because in my view, the conduct should be addressed immediately (rather than months later) so that it does not re-occur. For example, practitioners who fail to appear for scheduled hearings in a timely manner without good cause should be put on notice sooner rather than later that such misconduct is not acceptable and that the practitioner should appear in the future for all scheduled hearings, absent an emergency. Informing a practitioner about an obligation to appear for a scheduled hearing or to sign and file a Notice of Entry Appearance form several months or even a year after the conduct occurred would not be an effective way to curb the conduct and change behavior. Moreover, it is important to try and resolve this type of misconduct sooner rather than later because repeated failures to appear interfere with the timely adjudication of immigration cases, potentially contributing to the backlog of cases in immigration court. Additionally, regarding § 1003.102(l) and § 1003.102(t) specifically, the facts alleged in the complaint usually describe conduct that may be determined to constitute a violation of the applicable rule without the need for further investigation.

17. When a complaint appears to demonstrate prima facie evidence of a violation of EOIR's rules of professional conduct, my staff or I usually send a confidential "inquiry letter" to the practitioner. This letter informs the practitioner of the complaint, and describes the conduct at issue and the rule(s) of professional conduct that are alleged to have been violated. The inquiry letter is comprised of information from the complaint and information gathered through our investigation, which most often includes a review of the EOIR record of proceedings. The inquiry letter informs the practitioner that, at the time of issuing the letter, I have not taken any formal position regarding the validity of the allegations. The practitioner is given at least 30 days to respond to the inquiry letter and to provide an explanation, if any, for the conduct at issue. If the practitioner responds, and provides an explanation that shows that he or she has not violated EOIR's rules of professional conduct as alleged, I will dismiss the complaint or dismiss the complaint with a warning. However, if the practitioner's response does not provide an explanation that excuses the conduct constituting the violation – or if the practitioner does not respond at all – I may issue informal confidential discipline or initiate formal disciplinary proceedings.

18. Informal confidential discipline, whether in the form of a warning letter or informal admonition, provides the practitioner with a description of the conduct that is the subject of the complaint, a summary of the practitioner's response to such conduct, if any, and an analysis of why the conduct is a violation of the rules of professional conduct. The goal is to caution the practitioner that his or her conduct was in violation of the rules of professional conduct in the hope that the practitioner changes his or her practices and does not repeat the conduct. This type of discipline is informal and does not result in any formal sanction to the practitioner. Besides dismissals, informal confidential discipline is the most common way in which a complaint is closed.

19. In some instances, a complaint may merit informal confidential discipline in the first instance without sending an inquiry letter to the practitioner. These cases are rare and are limited to circumstances in which I find that the facts as alleged in the complaint are confirmed as true so no further investigation is necessary. In such instances, no preliminary inquiry is needed because the facts "speak for themselves." Additionally and importantly, however, issuance of such informal confidential discipline by itself will not result in any formal sanction to the practitioner as described in 8 C.F.R. § 1003.101(a).

20. In some cases when informal confidential discipline is issued, my letter may contain the statement that the practitioner "cease and desist" from a certain practice because it is or may be – if continued in a pattern or practice of activity – a violation of the rules of professional conduct. Such a statement is consistent with the cautionary statements I make in warning letters and admonitions so that the practitioner is aware of conduct that needs to be changed in order to avoid violating the rules of professional conduct and the initiation of formal disciplinary proceedings in the future.

21. I may also enter into an agreement with the practitioner in lieu of discipline. These types of agreements are instituted in limited circumstances in cases when the practitioner admits that he or she has engaged in professional misconduct and is seeking to avoid the initiation of formal disciplinary proceedings. For example, such agreements have been used to require practitioners to return unearned fees to clients. The scope of such an agreement is fashioned in my discretion as Disciplinary Counsel. *See* 8 C.F.R. § 1003.104(c).

22. Formal disciplinary proceedings[4] are instituted when I determine that "sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct." 8 C.F.R. § 1003.105(a). As a general matter, largely due to resource concerns, formal disciplinary proceedings are initiated infrequently and limited to conduct that is egregious, conduct that is repeated despite prior informal confidential discipline, and/or conduct that is the subject of multiple complaints. To institute formal disciplinary proceedings, I file a Notice of Intent to Discipline ("NID") with the Board and serve it on the practitioner. The NID contains a statement of the charge(s), a proposed sanction, and a copy of the preliminary inquiry report. The practitioner must file a timely answer to the NID or the Board will enter a default order. If a practitioner files an answer to the NID, then EOIR will appoint an adjudicating official from a specially trained corps of immigration judges to hear and decide the case. The adjudicating official and/or the Board will make a finding as to whether the practitioner has violated the rules of professional conduct and will make a determination on the appropriate sanction.

23. Since I began serving in the role of Disciplinary Counsel for EOIR (previously known as "Bar Counsel") in July 2000, I have been solely responsible in my capacity as Disciplinary Counsel for all decisions with regard to investigating complaints, dismissing complaints, issuing informal confidential discipline, and instituting formal disciplinary proceedings. While immigration judges or Board members acting as administrative officials are tasked with determining whether disciplinary sanctions should be imposed once formal disciplinary proceedings have been initiated, no other EOIR employee or entity within the agency has been given authority to determine the scope of investigation and initiation of charges under the applicable regulations.

24. No Department of Justice official outside of EOIR has dictated the manner in which I, as EOIR Disciplinary Counsel, take action under the disciplinary regulations, including 8 C.F.R. § 1003.102(t) or any other disciplinary rule.

25. I have never spoken to any Department of Justice official outside of EOIR about this case or the letter I sent to Northwest Immigrant Rights Project ("NWIRP") on April 5, 2017.

[4] When someone has been convicted of a serious crime or has been suspended or disbarred by a state bar or federal court, for example, I initiate formal, streamlined proceedings, as provided by regulation, to seek an immediate sanction. *See* 8 C.F.R. § 1003.103.

26. I have never spoken to President Donald Trump or his White House staff about this case, the letter I sent to NWIRP on April 5, 2017, or for any other reason.

27. I have never spoken to Attorney General Jefferson B. Sessions, III about this case, the letter I sent to NWIRP on April 5, 2017, or for any other reason.

Importance of 8 C.F.R. § 1003.102(t)

28. The twenty-one grounds for misconduct that constitute chargeable disciplinary conduct are listed at 8 C.F.R. § 1003.102.[5] These chargeable grounds were expanded by EOIR's December 18, 2008 rulemaking, "Professional Conduct for Practitioners – Rules and Procedures," 73 FR 76914, which became effective on January 20, 2009.

29. 8 C.F.R. § 1003.102(t), added by EOIR's 2008 rulemaking, defines as misconduct the failure to "submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner: (1) Has engaged in *practice* or *preparation* as those terms are defined in 1003.1(i) and (k), and, (2) Has been deemed to have engaged in a pattern and practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion or other filing shall be signed by the practitioner of record in his or her individual name[.]"

30. The purposes and guiding principles behind the enforcement of 8 C.F.R. § 1003.102(t) were succinctly stated in the supplementary information to the proposed and final rules that promulgated it.

[5] These grounds of misconduct are charging or receiving grossly excessive fees, § 1003.102(a); bribery or coercion, § 1003.102(b); false or misleading statements or evidence, § 1003.102(c); soliciting clients for money, § 1003.102(d); practicing while disbarred or suspended by a state bar or a federal court, § 1003.102(e); a false or misleading statement about qualifications, § 1003.102(f); contempt of court through contumelious or obnoxious conduct, § 1003.102(g); conviction of a serious crime, § 1003.102(h); false certification of a document, § 1003.102(i); frivolous behavior, § 1003.102(j); ineffective assistance of counsel, § 1003.102(k); repeated failures to appear in court, § 1003.102(l); assistance in unauthorized practice of law, § 1003.102(m); conduct prejudicial to the administration of justice, § 1003.102(n); incompetence, § 1003.102(o); failure to abide by the client's decision as to the scope of representation, § 1003.102(p); lack of diligence, § 1003.102(q); failure to communicate with a client, § 1003.102(r); failure to disclose adverse legal authority, § 1003.102(s); failure to submit a signed notice of appearance or sign a filing, § 1003.102(t); and boilerplate filings, § 1003.102(u).

31. In the proposed rule, the Department stated that 8 C.F.R. § 1003.102(t) was patterned after the language of Rule 11 of the Federal Rules of Civil Procedure. Section 1003.102(t) was "intended to address the growing problem of practitioners who seek to avoid the responsibilities of formal representation by routinely failing to submit the required notice of entry of appearance forms" and the attendant "difficulties in pursuing a practitioner for discipline for participating in the preparation of false or misleading documents are apparent when the practitioner fails to submit a completed notice of entry of appearance form." The Department concluded that the goals of § 1003.102(t) would be "accountability for the preparer and presenter of documents that are submitted to the government and the elimination of fraudulent practices that undermine a client's ability to seek recourse against a practitioner when the practitioner fails to formally acknowledge representation and subsequently provides ineffective assistance of counsel or otherwise engages in misconduct." *See* 73 FR 44183.

32. Similarly, in the final rule, the Department asserted: "The Department believes that all practitioners should submit Forms EOIR-27 and EOIR-28, and sign all filings made with EOIR, in cases where practitioners engage in "practice" or "preparation" as those words are defined in 8 CFR 1001.1(i) and (k). It is appropriate to require practitioners who engage in "practice" and "preparation," whether it is for a fee or on a bro bono basis, to enter a notice of appearance and sign any filings submitted to EOIR. As stated in the supplemental information to the proposed rule, this provision is meant to advance the level of professional conduct in immigration proceedings and foster increased transparency in the client-practitioner relationship. Any practitioner who accepts responsibility for rendering immigration-related services to a client should be held accountable for his or her own actions, including the loss of the privilege of practice before EOIR, when such conduct fails to meet the minimum standards of professional conduct in 8 CFR 1003.102. It is difficult for EOIR to enforce those standards when practitioners fail to enter a notice of appearance or sign filings made with EOIR." 73 Fed. Reg. 76,914, 76,919 (Dec. 18, 2008).

33. 8 C.F.R. § 1003.102(t) is essential to my ability to discipline practitioners because practitioners' compliance with § 1003.102(t) allows me to *identify* practitioners who commit misconduct, as embodied in the twenty other charges described in § 1003.102. Put differently, when an individual practitioner fails to enter a notice of appearance or sign a document, it is difficult – and in some cases, impossible – for me to determine *who* engaged in the alleged

misconduct, and thus, it is difficult to take further action or initiate formal discipline. In fact, if there are no other indicators in the record that can lead me to a specific individual who might have prepared the document, these cases have to be dismissed because I don't know to whom to write.

34. For example, when a motion or brief is signed and filed by the alien *pro se* but it appears as if the motion or brief was clearly drafted by an unidentified individual with a legal background, it is hard to identify that drafter unless there is evidence in the record that points to that drafter, such as an envelope containing a return address or a signed proof of service. Even then, after investigation of a return address, it may be difficult to take further action or initiate formal discipline if the attorney denies involvement, given the high standard of "clear and convincing evidence." *See e.g.* Exhibit 1; Exhibit 2. And, while some drafters will sign an accompanying proof of service, *see e.g.* Exhibit 3, many will not in order to hide their identity.

35. Additionally and importantly, I use identifying information on a Notice of Entry of Appearance form to check against any relevant state bar information, as necessary, in order to determine if a practitioner is under any orders of discipline by state bar regulators, or if an individual may be engaging in the unauthorized practice of law.

36. In these ways, the ability to identify practitioners enables me to enforce EOIR's professional conduct rules and has facilitated the reporting of misconduct to me.

37. Moreover, in my seventeen years as Disciplinary Counsel, I have been made aware from complaints received of the problems in the immigration field associated with "ghostwriting," i.e. individuals who engage in the practice of drafting documents for *pro se* individuals, but fail to sign the documents or enter a Notice of Entry of Appearance in their name as the actual drafter of the document. I believe that many of these individuals do so in order to evade responsibility for their actions and that such actions risk harming vulnerable *pro se* immigrant respondents. For example, I am aware based upon internal discussions with EOIR's Fraud and Abuse Prevention Counsel, and with individuals from the immigration courts and the Board that ghostwriting can harm *pro se* individuals when the drafted document includes incorrect or false information about an individual's case or is a "boilerplate" document that does not address the particular facts of the individual's case. Such conduct may cause an individual to squander his or her one opportunity to file a motion to reopen or appeal as of right. *See e.g.* Exhibit 1; Exhibit 2; Exhibit 4. In some instances, such practitioners are *notarios*, or, individuals engaging in the unauthorized practice of law. Given these potential harms, I believe that my ability to enforce 8 C.F.R. § 1003.102(t) deters

some of these individuals from ghostwriting motions, briefs and other documents because they know that they are required to identify themselves to EOIR under this provision.

38. For these reasons, if I am unable to enforce § 1003.102(t), not only may practitioners escape any consequences for their misconduct, but immigrant respondents will be exposed to irreparable harm by individuals who are not authorized by federal regulation to practice immigration law in the first place.

39. Relatedly, I have concerns about the harms that can result when practitioners take action on behalf of a respondent in a limited capacity, instead of entering an appearance. For example, while separate appearances are permitted for bond and removal proceedings, immigration judges have informed me that clients often do not understand the concept of separate appearances. Clients are confused when a practitioner who represented them in a bond proceeding does not appear on their behalf in their removal proceedings because the practitioner only entered an appearance for the bond proceedings. In these circumstances, immigration judges have indicated that if they are unsure whether a respondent is in fact represented – based upon statements by a respondent to the effect that they were represented by counsel at *some point* or that they thought the practitioner would represent them for their entire case – judges will likely continue the hearing to allow the respondent time to locate his or her attorney, resulting in a further delay of the immigration proceedings. If practitioners were permitted to appear in a more limited capacity than allowed under current regulations without other safeguards in place, I believe that the confusion that clients have now and the delays in the ability to complete immigration proceedings in a timely manner will be compounded. Entering an appearance not only allows me to identify responsible practitioners, but it makes the existence of an attorney-client relationship more transparent and aids in the proper functioning of the courts.

Past Enforcement of 8 C.F.R. § 1003.102(t)

40. In practice, EOIR, through the Attorney Discipline Program, has taken action with respect to alleged violators of 8 C.F.R. § 1003.102(t) in the same manner that it takes action with respect to any alleged violator of the professional conduct rules set out at 8 C.F.R. § 1003.102. I have not and do not single out or target individual practitioners, nonprofit organizations, nongovernmental organizations, or any type of law firms for enforcement. I am not aware of any informal or formal policy or guidance regarding the targeting of enforcement of charges under 8

C.F.R. § 1003.102 against certain practitioners, or types of practitioners, or practitioners employed by certain organizations or law firms, or types of organizations or law firms.

41. Instead, in practice I enforce 8 C.F.R. § 1003.102(t) against alleged violators as I enforce all other charges under § 1003.102. As complaints are submitted to me in my role as Disciplinary Counsel that may implicate conduct described in § 1003.102 (and in conjunction with the action described in paragraph 15), I evaluate whether the conduct alleged constitutes a violation or violations under § 1003.102. I consider whether a violation has been committed even if the individual who is the subject of the complaint has not previously, or is not currently, engaged in other unethical behavior or professional misconduct.

42. Like with any other alleged violation of the rules of professional conduct, the conduct alleged in a complaint that may implicate § 1003.102(t) is reviewed to determine if there is clear and convincing evidence of a violation. In practice, the following conduct has been identified as a possible violation of § 1003.102(t): failure to personally sign and file a complete and accurate Notice of Entry of Appearance, and/or failure to sign a motion, brief or other document ultimately filed before an immigration court or the Board.

43. Since 8 C.F.R. § 1003.102(t) became effective on January 20, 2009, in my role as Disciplinary Counsel, I have issued 31 letters that EOIR has located based on complaints or other information received, including the letter sent to Matt Adams on behalf of NWIRP on April 5, 2017, that address a possible violation of § 1003.102(t). Regardless of whether these letters dismissed the complaint or found the complaint was substantiated, the letters have included a warning or cautionary statement that the particular individual's conduct may be in violation of 8 C.F.R. § 1003.102(t) for the particular type of conduct described in the paragraph above. That cautionary statement may be about the obligation to file a Notice of Entry of Appearance, the obligation to sign filings that the practitioner drafted, or the obligation to sign and file a complete and accurate Notice of Entry of Appearance, or a combination of these obligations.

44. In the cases in which the practitioners have not entered a Notice of Entry of Appearance or otherwise identified themselves, the conduct involved the drafting of documents including, but not limited to: a motion to reopen, a motion to reconsider, a motion for stay of removal, a motion for extension of time to file a brief, or a combination of these documents, and in each instance, the document(s) was filed with an immigration judge or the Board. In the instances where a pro se respondent signed the documents, it appeared highly unlikely that the

drafter of the document was actually the pro se individual who signed the document. *See e.g*. Exhibit 5; Exhibit 6. The document will have citations to legal authority, application of facts to law, and/or legal arguments that most likely could not have been written by a pro se respondent.

45. In order to identify the true drafter of the document, I attempt to locate identifying information attached to or in the motion or brief itself – such as a name on the certificate of service, an address on letterhead or an envelope attached to the motion or brief, or a notation of a practitioner who previously entered an appearance in the respondent's case during a different stage of the proceedings. *See e.g*. Exhibit 3. I address the confidential letter to the practitioner who can most reasonably be identified as the presumed drafter of the motion, brief or other document based on the circumstantial evidence. In some of these cases, the evidence was sufficient to find that the practitioner drafted the document or the practitioner admitted to drafting the document, but in other cases, the evidence did not result in such a finding despite my suspicions. In most cases of the above conduct regarding the signing, completing, and filing of a Notice of Entry of Appearance, I cannot find clear and convincing evidence of a violation of § 1003.102(t) because there is no evidence of a "pattern or practice" of such conduct. However, even though I may not find a violation of § 1003.102(t), I still write to the practitioner and/or remind him of the requirement. I caution the practitioner about the obligation to enter a signed and completed Notice of Entry of Appearance when engaging in conduct that constitutes "practice" or "preparation" or to "cease and desist" from engaging in conduct that constitutes "practice" or "preparation" without filing a Notice of Entry of Appearance. Such reminders and cautionary statements are even made when that particular conduct relating to § 1003.102(t) was raised in response to other alleged misconduct conduct by the practitioner that was the primary focus of our investigation.

46. In my role as Disciplinary Counsel, I have never taken any disciplinary action against an individual when an individual has failed to sign, complete, and file a Notice of Entry of Appearance form in conjunction with any of the following conduct: provision of general information about the immigration court system; interviews with or screening of potential clients; individual consultations to review facts of a particular person's case; conducting community workshops or "Know Your Rights" presentations; or merely assisting with the completion of "fill-in-the blank" forms. Additionally, I consulted on the July 11, 2011 memorandum by Steven Lang, Program Director of the Office of Legal Access Programs, regarding the definition of "representation" in 8 C.F.R. §§ 1.1(m), 1001.1(m)—which, like 8 C.F.R. § 1003.102(t)(1), cross-

references the terms "practice" and "preparation" as defined in 8 C.F.R. § 1.1(i), (k), and § 1001.1(i), (k), respectively. I consider the activities identified as not "representation" in that memorandum as activities that would not trigger disciplinary action, whether informal confidential discipline or the initiation of formal disciplinary proceedings.

47. In my role as Disciplinary Counsel, I have never instituted formal discipline – i.e., the issuing of a NID as described above – for an alleged violation of 8 C.F.R. § 1003.102(t). No individual has been formally sanctioned for this conduct.

48. The limited number of enforcement actions taken under § 1003.102(t) since the regulation became effective on January 20, 2009 does not support the conclusion that there has been a change in EOIR's practice of enforcing § 1003.102(t). Rather, my practice of enforcing 102(t) since January 20, 2009 has been the same. *See e.g*. Exhibit 7 *and compare with* Exhibit 10. First, the practice of entering a Notice of Entry of Appearance is a regular and routine activity that most practitioners perform without difficulty because they readily agree to accept responsibility for their work. Second, and most relevant to these proceedings, practitioners and *notarios* who want to avoid identification and accountability for their work can often do so because it is extremely difficult for EOIR to successfully investigate, identify, and take action under § 1003.102(t) when a practitioner or *notario* does not expose identifying information that could be discovered. *See e.g*. Exhibit 1; Exhibit 2.

Letter of April 5, 2017 to NWIRP regarding 8 C.F.R. § 1003.102(t)

49. In October 2016, Brea Burgie, the EOIR Fraud Abuse and Prevention Counsel, and I had a phone conversation with representatives from NWIRP regarding the application of 1003.102(t) and how it applied to NWIRP. On that call, NWIRP raised the question of their compliance with 1003.102(t), given that they were a "recognized organization" by the Board.[6] I explained that even competent attorneys can make mistakes, and as such, 1003.102(t) must be applied uniformly to *all* immigration practitioners – regardless of who employs them – when they

[6] NWIRP stated that because they were a "recognized organization" by the Board, their organization had already been "vetted" and should, thus, be exempt from the requirement to file a Notice of Entry of Appearance form in certain circumstances. However, even if NWIRP is a recognized organization, such organizations, and particularly the practitioners thereof, are still subject to the same rules of professional conduct as other practitioners. *See* 8 C.F.R. 1003.101(b). Being a recognized organization confers no other status than the ability to provide immigration legal services through non-attorneys who they sponsor for accreditation.

fail to sign and file a Notice of Entry of Appearance form when filing legal documents. I offered my assistance to have NWIRP call me in the future if they had any question or needed guidance with regard to this rule.

50. On November 1, 2016, the Court Administrator for the Tacoma Immigration Court, Edwin Lopez, wrote to the EOIR Fraud and Abuse Prevention Counsel, Brea Burgie, about a potential fraud. *See* Exhibit 8. Mr. Lopez stated that the respondent's signatures on documents in his criminal proceedings differed from his signatures on his *pro se* motion to reopen in his removal proceedings. Mr. Lopez stated that an immigration judge suspected that NWIRP may have been involved in the possible fraud because NWIRP indicated on the *pro se* motion to reopen that it provided assistance to the respondent. Ms. Burgie forwarded this complaint to me because it concerned a possible violation of 8 C.F.R. § 1003.102(t), since no practitioner from NWIRP had signed the motion to reopen or entered a Notice of Entry of Appearance.

51. On January 5, 2017, I received a complaint from Immigration Judge Brett Parchert at the Seattle Immigration Court about a possible violation of 8 C.F.R. § 1003.102(t) by NWIRP. Judge Parchert stated in his complaint: "I have a case where an alien and her children were ordered removed in absentia. She has filed a *pro se* motion to reopen. However, the motion states it is being filed with the assistance of the Northwest Immigrant Rights Project and it included an I-589 drafted by NWIRP. Yet, no one from NWIRP has entered a Notice of Appearance. I know there is an ethical prohibition in the regs about acting as a lawyer but not filing an E-28." *See* Exhibit 9.

52. Upon completion of a preliminary inquiry into both complaints, I issued the April 5, 2017 confidential discipline letter to Matt Adams on behalf of NWIRP for conduct arising under § 1003.102(t). Consistent with the other letters described above that I issued for conduct that may violate § 1003.102(t), the letter warned NWIRP that an individual(s) at NWIRP may have violated 8 C.F.R. § 1003.102(t) when he or she drafted two motions to reopen, one with an asylum application attached, but had not signed, completed and filed a Notice of Entry of Appearance form in conjunction with the filing of the motions before EOIR's immigration courts and had not signed the motions to reopen as the drafter of such motions. The letter also noted that the respondent's "signature on his Motion to Reopen appears to be inconsistent with his signature on December 21, 2015, requesting a custody redetermination by an Immigration Judge. This difference could indicate that someone other than [the respondent] drafted his motion to reopen."

53. The letter issued to Matt Adams on behalf of NWIRP on April 5, 2017 was confidential discipline. It simply *warned* practitioners at NWIRP that they must enter a signed and completed Notice of Entry of Appearance form before drafting a motion, brief or other document on behalf of an immigrant respondent, and that if such practice resulted in a "pattern" of not signing and completing a Notice of Appearance form, formal discipline – such as sanctions – could result. It did not result in any sanctions to any NWIRP practitioner.

54. The letter sent to NWIRP on April 5, 2017 was addressed to Matt Adams, the Legal Director for NWIRP, because the identifying information that I could glean from the notations on the two motions to reopen clearly indicated that *someone* at NWIRP had drafted the motions. Because Matt Adams is the Legal Director of NWIRP, I determined that he was the most appropriate individual to receive the letter given that the particular individual practitioner responsible for drafting the motions could not be identified from the motions. If the identity of the practitioner from NWIRP who drafted the motions could have been ascertained from the documents, I would have written the letter directly to that practitioner, as I have done in other similar cases.

55. I addressed the letter to Matt Adams on behalf of NWIRP not because I was seeking to enforce the regulation against NWIRP in its capacity *as an organization*,[7] but because the conduct of NWIRP's staff became known to EOIR through the respondents' notation of NWIRP's organizational name on both motions to reopen, without identifying an individual by name.

56. As described above in paragraph 49, in past discussions with NWIRP, NWIRP has suggested that nonprofit organizations, such as NWIRP, be given leave to file written documents with the immigration courts and the Board without signing, completing and filing a Notice of Entry of Appearance form, so long as there is a notation indicating that their organization has provided assistance in drafting and filing the document. However, such suggestion is unenforceable under EOIR's current rules of professional conduct.[8]

---

[7] Separately, "recognized organizations"—i.e. nonprofit organizations which sponsor non-lawyer professionals to represent individuals in immigration proceedings (formally, "accredited representatives")—can be subject to disciplinary sanctions that affect its ability to sponsor accredited representatives. *See* 8 C.F.R. § 1003.110. While as Disciplinary Counsel, I have authority to initiate disciplinary proceedings for that purpose, *see* 8 C.F.R. § 1003.110(c), I did not send the April 5, 2017 letter to NWIRP for that purpose. The April 5, 2017 letter does not mention 8 C.F.R. § 1003.110.

[8] *See* n.6, *supra*.

57. First, the Disciplinary Counsel, under EOIR's rules of professional conduct, only has the authority to take action or initiate disciplinary proceedings against "practitioners," not immigrant respondents. *See e.g.* 8 C.F.R. § 1003.101(b), § 1103.105. So long as a *pro se* individual files and signs a written document, there is nothing in EOIR's professional conduct rules that requires the *pro se* individual to include the notation that NWIRP suggests to account for any assistance it may have provided.

58. Second, NWIRP's notation only notes the name of the organization, not the specific practitioner who provided the assistance. For some reason that NWIRP has not provided, NWIRP does not identify the individual in its organization who assisted these respondents or whether that individual is authorized to provide immigration legal services. Under these circumstances, I could not identify a specific practitioner to write to at NWIRP, if, in fact, a practitioner is the individual who assisted these respondents. Section 1003.102(t) – like the other professional conduct rules – is enforced uniformly as to *any* practitioner who comes before EOIR, including any practitioner who works for a nonprofit organization or provides pro bono services. Regrettably, I am aware of instances in which practitioners employed by nonprofit organizations have engaged in misconduct to the detriment of their clients, such as "Father Bob" Vitaglione in New York, notwithstanding his "good intentions." *See In re Reverend Robert Vitaglione* (BIA 2011), *attached as* Lang Declaration, Exhibit 1.

59. For these reasons, I do not believe it is appropriate to provide NWIRP with an *ad hoc* "exception" to the manner in which I have enforced § 1003.102(t) in practice, nor would such an exception be allowable or enforceable under EOIR's current regulations.

Conclusion

I declare under penalty of perjury of the laws of the United States and the State of Virginia that the foregoing is true and correct to the best of my knowledge and belief.

June 26, 2017
Date

Jennifer Barnes
JENNIFER BARNES
Disciplinary Counsel
Falls Church, Virginia

Exhibit 1

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

October 7, 2016

CONFIDENTIAL

[redacted]

RE: [redacted]
D2016-0142

Dear [redacted]:

This office has recently completed an inquiry into allegations of a possible violation on your part of one or more of the Rules and Procedures of Professional Conduct for Practitioners (Rules). *See* 8 C.F.R. § 1003.104. It is the burden of this office to find clear and convincing evidence of a violation in order to institute disciplinary proceedings against an attorney. "Clear and convincing" evidence is more than a preponderance, the standard in civil cases. Upon review, we are unable to find clear and convincing evidence of a violation of the Rules on your part. Accordingly, we will be dismissing our inquiry.

On or about December 15, 2015, the Executive Office for Immigration Review (EOIR) Disciplinary Counsel initiated a preliminary inquiry based upon a complaint from the Board of Immigration Appeals (BIA) about your representation in *Matter of* [redacted] and *Matter of* [redacted].

Our investigation indicated that you represented both [redacted] and [redacted] during their initial proceedings before the [redacted] Immigration Court. You represented [redacted] before the [redacted] Immigration Court by filing a Notice of Entry of Appearance Form EOIR-28 on May 10, 2011. Your address on the Form EOIR-28 is listed as [redacted]. On May 29, 2014, [redacted] filed what appeared to be a *pro se* Notice of Appeal Form EOIR-26, listing his address as [redacted]. On April 6, 2015 [redacted] filed a 20-page brief in English stating his arguments for reversing the Immigration Judge's denial of his application for asylum and withholding of removal. On December 11, 2015, the BIA issued a final order, dismissing his appeal. In a footnote, the BIA noted:

> "The filing and address information in this case suggest that the respondent may presently be availing himself of the services of either a non-attorney or an attorney who has not entered the required notice of appearance on their behalf . . . ."

You also represented [redacted] before the [redacted] Immigration Court by filing a Notice of Entry of Appearance, EOIR-28, on February 3, 2009. On February 20, 2015 [redacted] filed what appeared to be a *pro se* Notice of Appeal Form EOIR-26, listing her address as [redacted]. Then, on May 28, 2015 [redacted] filed a 23-page brief in English stating her arguments for reversing the Immigration Judge's denial of her application for asylum, withholding of removal, and Convention Against Torture. It was unclear why [redacted] and [redacted] listed your office addresses as their mailing addresses when they filed these appeals *pro se*, and also how it was possible that these two aliens filed such lengthy appeal briefs in English. Based on the above, our office charged you with a possible violation of Rule 1003.102(t) (failure to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative).

On June 20, 2016, this office wrote to you requesting your response to the allegations. On or about July 27, 2014, you submitted your written response to the allegations against you.

In your response, you asserted that although you represented [redacted] before the [redacted] Immigration Court, [redacted] did not retain you to represent him on his appeal to the BIA, and, furthermore, you did not actually represent him on his appeal to the BIA. You stated that you did not know who prepared his brief on appeal and that none of your staff could have done so. You added that you did not know why [redacted] used your office address as his address of record in his *pro se* appeal. You stated that you did not authorize him to use your address and that he apparently did so without your consent.

Regarding your representation of [redacted] you stated that [redacted] was your client up until December 2013, when you maintained a law office at [redacted]. You explained that you ceased operating an office at that location in December 2013 and noted that [redacted] submitted her appeal using that address in May 2015. You added that [redacted] did not retain you to represent her on appeal to the BIA and, moreover, you did not represent her on appeal to the BIA. You also stated that you did not prepare her brief on appeal, that you did not know who prepared the brief, and that no one on your staff could have prepared the brief. You maintained that you did not authorize [redacted] to use your former office address and that she apparently did so without your consent.

Upon review of the record, including your response, we are unable to find clear and convincing evidence of a violation of the Rules on your part, and we will be dismissing the charge of misconduct under Rule 102(t) (failure to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative). Although it is apparent that at one point you represented both [redacted] and [redacted], and that they used your current and former office addresses when submitting a *pro se* appeal to the BIA, it is unclear why they did so when you maintain that you did not agree to represent them on appeal. In addition, we note that [redacted]

submitted as her address of record on appeal a former office address that you ceased using one-and-a-half years prior to her *pro se* appeal to the BIA. Accordingly, we find that your conduct and actions are not sufficient to establish a violation of the Rules.

We trust that this letter adequately advises you of the basis of our decision to dismiss this matter.

Sincerely,

Jennifer Barnes

Jennifer Barnes
Disciplinary Counsel

Exhibit 2

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

August 17, 2016

[redacted]

RE: [redacted]
D2016-115

Dear [redacted]

Our office has recently completed an inquiry into allegations of a possible violation on your part of one or more of the Executive Office for Immigration Review (EOIR) Rules of Professional Conduct (Rules). *See* 8 C.F.R. § 1003.104. It is the burden of this office to find clear and convincing evidence of a violation in order to institute disciplinary proceedings against an attorney. "Clear and convincing" evidence is more than a preponderance, the standard in civil cases. Upon review, we are unable to find clear and convincing evidence of a violation on your part.

On or about May 26, 2016, EOIR Disciplinary Counsel initiated a preliminary inquiry based upon a complaint from the Board of Immigration Appeals (Board) alleging that you violated one or more of the EOIR Rules, including Rule 102(t) (Notice of Entry of Appearance), during your representation in *Matter of* [redacted]. Thereafter, this office obtained and reviewed the record of proceedings in this case.

Our review of the record revealed that [redacted] filed a *pro se* EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, listing an address associated with your office as her own. She also submitted a lengthy appeal brief written in English despite having limited English proficiency.

On June 28, 2016, our office sent a letter to you requesting your response. On or about July 5, 2016, you submitted your written response. In your response, you deny representing

[redacted] before the Board. Additionally, you state that, after receiving our letter, you confronted your office assistance, [redacted] and learned that she had allowed [redacted] to utilize your office address because she "was a former client who needed a secure place to receive mail." You emphasize that this was done without your authorization and that [redacted] now understands that applicants must use their own addresses for purposes of appeal. Finally, your response states that, even after discussing the matter with [redacted] you remain entirely unaware of the identity of the author of her appeal brief before the Board. You state that she informed you that she hired another "immigration office" to represent her before the Board, an office whose practitioners did not file an entry of appearance as required. As further support of your response, you included affidavits from both [redacted] and [redacted] attesting to that stated above. Neither affidavit addresses the authorship of [redacted] brief.

In light of your explanation, and upon a subsequent review of the record as a whole, we can not find clear and convincing evidence of a violation of the Rules in this case and, as a result, dismiss the charge of misconduct under Rule 102(t). We trust this letter adequately advises you of the basis of our decision to dismiss this matter.

Sincerely,

Jennifer J. Barnes

Jennifer J. Barnes
Disciplinary Counsel

Exhibit 3

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

October 9, 2012

CONFIDENTIAL

[redacted]

RE: [redacted]
D2012-058

Dear [redacted]:

It has recently come to the attention of this office that you may have assisted in the filing of two (2) motions to reopen with the Board of Immigration Appeals "(Board") in *Matter of* [redacted] on October 21, 2009, and May 9, 2011, but failed to file a Notice of Entry of Appearance Form, EOIR 27, a possible violation of the Executive Office for immigration Review ("EOIR") Rules of Professional, Conduct, specifically, Rule 1003.102(t). Rule 102(t) states that an attorney can be subject to discipline if he or he:

> Fails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner:
>
> > (1) Has engaged in practice or preparation as those terms are defined in §§ 1001.1(i) anld (k)[1], and

---

[1] "Preparation" as defined in 8 C.F.R. §1001.1(k) means the study of the facts of a case and the applicable laws coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedures. "Practice" as defined in 8 C.F.R. § 1001.1(i) means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf

> (2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name.

8 C.F.R. § 1001.102(t).

When these motions to reopen were filed in [redacted] case, you signed the proof of service with each of these motions. Although it is not entirely clear to what extent you may or may not have assisted [redacted] with these motions, it appears highly unlikely that she prepared these motions on her own without any legal assistance. If you assisted her in the filing of these forms, this type of legal assistance is considered both "practice" and "preparation," as defined in the federal regulations. Therefore, in the future, you will need to properly file a Notice of Entry of Appearance form with the Board or the Immigration Court under these circumstances. Failure to do so on a repeated basis may subject you to discipline under the Rules as described above.

Sincerely,

Jennifer J. Barnes

Jennifer J. Barnes
Disciplinary Counsel

Enclosures

---

of another person or client before or with the Service, or any officer of the Service, or the Board.

Exhibit 4

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia ~~22041~~ 20530

March 26, 2015

[redacted]

RE: [redacted]
D2013-209

Dear [redacted]

This office has recently completed an inquiry into allegations of a possible violation on your part of one or more of the Rules and Procedures of Professional Conduct for Practitioners (Rules). *See* 8 C.F.R. § 1003.104. It is the burden of this office to find clear and convincing evidence of a violation in order to institute disciplinary proceedings against an attorney. "Clear and convincing" evidence is more than a preponderance, the standard in civil cases. Upon review, we find clear and convincing evidence of a violation of the Rules on your part. Because your conduct reflected a disregard of certain ethical standards, we are issuing to you this Warning Letter pursuant to 8 C.F.R. § 1003.104(c) of the Rules. Under the Rules, a Warning Letter is confidential, and not part of the public record. 8 C.F.R. § 1003.108(b).

On or about September 29, 2014, the Executive Office for Immigration Review (EOIR) Disciplinary Counsel initiated a preliminary inquiry based on a complaint from the Board of Immigration Appeals (Board) that during your representation in *Matter of* [redacted] you may have violated one or more of the EOIR Rules of Professional Conduct, including Rule 1003.102(o) (competence) and/or Rule 102(t) (practitioner's failure to sign a filing). Thereafter, this office obtained and reviewed the record of proceedings in this case.

You and your firm represented [redacted] during his removal proceedings before the [redacted] Immigration Court.[1] On October 24, 2011, the Immigration Judge granted [redacted] request for voluntary departure. The Immigration Judge ordered [redacted] to voluntarily depart the United States by February 21, 2012.

1 You entered a Notice of Entry of Appearance (Form EOIR-28) in [redacted] case on February 8, 2008, and August 19, 2010. Another attorney from your firm [redacted] filed Form EOIR-28 on March 8, 2011.

On February 14, 2012, [redacted] filed a *pro se* motion to reopen to seek adjustment of status based on his marriage to a United States citizen. On April 27, 2012, the Immigration Judge denied the motion to reopen because it was untimely, did not include the appropriate applications and supporting documents, and failed to present clear and convincing evidence that [redacted] marriage was bona fide.

On May 25, 2012, [redacted] filed a *pro se* appeal of the Immigration Judge's denial of his motion to reopen. On March 20, 2013, the Board dismissed [redacted] appeal.

On April 26, 2013, [redacted] through a new attorney, filed a motion to reconsider or remand. [redacted] alleged that you and your firm provided him with ineffective assistance of counsel. He claimed, *inter alia*, that you and your firm prepared the February 14, 2012 motion to reopen and the appeal of the denial of the motion, but you and your firm declined to sign the documents and advised [redacted] to sign the documents as if he were unrepresented. [redacted] attached an affidavit to his motion, attesting that you and your firm prepared the *pro se* motion to reopen and the *pro se* appeal of its denial. [redacted] also attached an invoice from your office that shows that your firm prepared a "pro se motion for stay of removal" for [redacted] on January 31, 2013. On June 7, 2013, the Board denied the motion, noting that you engaged in "questionable" conduct in not signing the documents submitted to the Immigration Judge and the Board.

On September 29, 2014, this office wrote to you requesting your response to the allegations. On or about November 6, 2014, you submitted your written response to the allegations.

In your response, you admitted that you prepared the February 14, 2012 *pro se* motion to reopen and the subsequent *pro se* appeal of that motion. You stated that you assisted [redacted] with the motion and appeal because prior to his voluntary departure period expiring, he came to your office and explained to you that he had not left the United States since he first arrived, which may have made him eligible to adjust status through his new wife. You previously had thought [redacted] had left the United States in 2001 and entered again with a fraudulent passport. He now claimed that he never left the United States and that he only claimed to have left the United States because he was embarrassed that his daughter was not actually his daughter.

You thought that [redacted] story was "plausible" and that he may be eligible to adjust his status. However, you were not inclined to completely believe the story because [redacted] had made many prior misrepresentations to you doing your earlier representation of him, and you "did not have the time, resources, or inclination to check the veracity" of [redacted] story.

You sought an opinion from your local bar counsel as to what to do under the circumstances. Your bar counsel advised you that "where time is an issue – a statute is about to run – a lawyer must act to protect a client – even when there is a doubt about the client's

veracity." The bar counsel also referred you to the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility's Formal Opinion 07-446. That opinion states:

> A lawyer may provide legal assistance to litigants appearing before tribunals "pro se" and help them prepare written submissions without disclosing or ensuring the disclosure of the nature or extent of such assistance.

Based on this information, you decided to prepare the documents for [redacted] so that he could have the opportunity to present his case to another attorney. You did not sign the documents because you "were cognizant that under Rule 11, [you] could not sign a motion which [you] had not fully investigated and researched." You noted that you did not receive any payment for this work and that [redacted] still owes you thousands of dollars for your prior work on his case.

Based on the foregoing evidence, this office has determined that you have violated Rule 102(o) (competence) and Rule 102(t) (practitioner's failure to sign a filing).

Rule 102(o) provides that a lawyer shall be subject to disciplinary sanctions if he or she "[f]ails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." 8 C.F.R. § 1003.102(o). Rule 102(t) provides that a lawyer shall be subject to disciplinary sanctions if he or she "[f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with the applicable rules and regulations when the practitioner: (1) [h]as engaged in *practice* or *preparation* as those terms are defined in §§ 1001.1(i) and (k), and (2) [h]as been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion or other filing shall be signed by the practitioner of record in his or her individual name." 8 C.F.R. § 1003.102(t).

In the present matter, this office has determined that you violated Rule 102(t) when you prepared a motion to reopen and an appeal in [redacted] case without signing the filings or submitting a signed Notice of Entry of Appearance as Attorney. While we understand that ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 07-446 suggests that your conduct is permissible, that opinion is not binding with regard to practice before EOIR, as our Rules do not permit such conduct.[2] Rule 102(t) requires that an attorney enter an appearance and personally sign every filing that he or she makes before EOIR because:

[2] Note that the ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 07-446 recognizes that state and local ethics committees have reached different conclusions on the issue of whether attorneys must disclose their identity when they provide legal assistance to individuals.

> this provision is meant to advance the level of professional conduct in immigration matters and foster increased transparency in the client-practitioner relationship. Any practitioner who accepts responsibility for rendering immigration-related services to a client should be held accountable for his or her own actions, including the loss of the privilege of practice before EOIR, when such conduct fails to meet the minimum standards of professional conduct in 8 CFR 1003.102. It is difficult for EOIR to enforce those standards when practitioners fail to enter a notice of appearance or sign filings made with EOIR.

73 Fed. Reg. 76,914, 76,919 (Dec. 18, 2008).

Your failure to enter an appearance and personally sign your name on these filings was inappropriate, as it demonstrated a lack of responsibility for your conduct. As you understand from your knowledge of Rule 11 of the Federal Rules of Civil Procedure, an attorney's signature on a filing is more than a mere formality.

> "The signature of a practitioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose."

8 C.F.R. § 1003.102(j). Practicing before EOIR, you cannot attempt to escape responsibility for a filing you prepared merely by choosing not to sign it without running afoul of Rule 102(t). If you prepare a document for filing but cannot sign it because you do not believe that it is well-grounded in fact, then you should not have the document filed for adjudication. In fact, under such circumstances, you should have considered whether you could even continue to represent [redacted] As such, when [redacted] informed you that he had not left the United States, which differed from his prior representations, you should have conveyed to him that you could not assist him unless and until you could conduct a reasonable inquiry into his conflicting statements. You had no obligation to provide legal services to [redacted] as your representation of him concluded at the end of his removal proceedings. Competent attorneys in these circumstances would not have prepared the motion to reopen and appeal in [redacted] case, and if they did, they would have signed the filings in accordance with Rule 102(t). Based upon a review of the record, including your response, we have concluded that you violated Rules 102(o) and (t), and therefore, we issue this Warning Letter to you, pursuant to 8 C.F.R. § 1003.104(c).

Under § 1003.104(c), the Office of the General Counsel has discretion to issue informal admonitions and warning letters, in lieu of initiating formal proceedings before the Board of Immigration Appeals. Therefore, neither informal admonitions nor warning letters allow for hearings, and neither are subject to further review or appeal.

This Warning Letter will remain confidential under 8 C.F.R. § 1003.108(b) (confidentiality), except that it may become part of the public record should you become subject to a subsequent Notice of Intent to Discipline based upon unrelated misconduct.

Sincerely,

Jennifer Barnes

Jennifer Barnes
Disciplinary Counsel

Exhibit 5

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

October 31, 2016

CONFIDENTIAL

[redacted]

RE: [redacted]
D2015-0197

Dear [redacted]:

This letter is to inform you that the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) has received a complaint from the Board of Immigration Appeals (Board) concerning your conduct as an immigration practitioner. On February 15, 2013, and July 31, 2015, the Board issued decisions in *Matter of* [redacted] In both decisions, the Board noted that you did not file a Notice of Entry of Appearance (Form EOIR-27), although you filed the underlying motions that the Board ruled upon. The Board referred the decisions to our office as your conduct is a possible violation of Rule 1003.102(t) of the EOIR Rules of Professional Conduct (Rules).

Rule 102(t) states that an attorney can be subject to disciplinary sanctions if he or she:

> [f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with the applicable rules and regulations when the practitioner: (1) [h]as engaged in *practice* or *preparation* as those terms are defined in §§ 1001.1(i) and (k), and (2) [h]as been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations.

8 C.F.R. § 1003.102(t).

You engaged in "practice" and preparation" as defined at 8 C.F.R. §§ 1001.1(i) and (k) in [redacted] case by filing motions to reopen before the Board. Consequently, you failed to comply with Rule 102(t) when you failed to file a Notice of Entry of Appearance with

the motions. Rule 102(t) requires that a practitioner enter an appearance when engaging in "practice" and "preparation" because:

> this provision is meant to advance the level of professional conduct in immigration matters and foster increased transparency in the client-practitioner relationship. Any practitioner who accepts responsibility for rendering immigration-related services to a client should be held accountable for his or her own actions, including the loss of the privilege of practice before EOIR, when such conduct fails to meet the minimum standards of professional conduct in 8 CFR 1003.102. It is difficult for EOIR to enforce those standards when practitioners fail to enter a notice of appearance or sign filings made with EOIR.

73 Fed. Reg. 76,914, 76,919 (Dec. 18, 2008).

Our office does not believe that you intended to avoid responsibility when you did not file a Notice of Entry of Appearance because you identified yourself in the motions you filed. Nonetheless, your failure to file a Notice of Entry of Appearance can be a violation of Rule 102(t). We urge you to take this letter as a reminder of your obligation to file your Notice of Entry of Appearance when you engage in "practice" or "preparation" before the Immigration Courts and the Board.

Sincerely,

Jennifer J. Barnes

Jennifer J. Barnes
Disciplinary Counsel

Enclosures: Decision of the Board of Immigration Appeals, dated July 31, 2015; and
Decision of the Board of Immigration Appeals, dated February 15, 2013.

Exhibit 6

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 14, 2017

[redacted]

RE: [redacted]
D2016-0350

Dear [redacted]:

This letter contains allegations about your conduct which requires the Office of the General Counsel, Executive Office for Immigration Review, to initiate a preliminary inquiry and seek your response pursuant to 8 C.F.R. § 1003.104 of the Rules and Procedures of Professional Conduct for Practitioners ("Rules"). Our decision to investigate this complaint is based upon 8 C.F.R. § 1003.104(b), which provides, in pertinent part, that "upon receipt of a disciplinary complaint or on its own initiative, the Office of the General Counsel of EOIR will initiate a preliminary inquiry."

Our inquiry is routine under the policy of the Office of the General Counsel, and may be based on a complaint or information which is not corroborated. At this time, we have not taken any formal position regarding the validity of the allegations. However, our investigation reveals that you may have engaged in conduct that is in violation of 8 C.F.R. § 1003.102(t). Your failure to file a Notice of Entry of Appearance Form EOIR-28 is a possible violation of the Rules. Rule 102(t) states that an attorney can be subject to discipline if he or he:

> Fails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner:
>
> > (1) Has engaged in practice or preparation as those terms are defined in §§ 1001.1(i) and (k)[1], and

[1] "Preparation" as defined in 8 C.F.R. §1001.1(k) means the study of the facts of a case and the applicable laws coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or

> (2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name.

This office has received information in an immigration case being heard before the El Paso, Texas Immigration Court that supports these allegations. In *Matter of* [redacted] a Motion to Reopen was allegedly filed *pro se* by [redacted] in his immigration case. However, the Motion to Reopen was drafted on your law firm's letterhead, which leads us to believe that this motion was not, in fact, a *pro se* motion but a motion that you assisted [redacted] n filing.

Pursuant to 8 C.F.R. § 1003.102(t), an attorney who engages in "representation" of an alien, which includes the acts of "practice" or "preparation" is obligated to file a Notice of Entry of Appearance Form EOIR-28 along with any filings with the Court.

> Any practitioner who accepts responsibility for rendering immigration-related services to a client should be held accountable for his or her own actions, including the loss of the privilege of practice before EOIR, when such conduct fails to meet the minimum standards of professional conduct in 8 CFR 1003.102. It is difficult for EOIR to enforce those standards when practitioners fail to enter a notice of appearance or sign filings made with EOIR.

73 Fed. Reg. 76919 (Dec.18, 2008).

Therefore, this office advises that, in the future, you ensure that any filings made in conjunction with cases in which you have engaged in "practice' or "preparation," as defined in the regulations, be accompanied by a Form EOIR-28, Notice of Entry of Appearance. Failure to complete and submit a Form EOIR-28 under these circumstances may result in disciplinary action being initiated against you.

---

service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedures. "Practice" as defined in 8 C.F.R. § 1001.1(i) means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.

Sincerely,

Jennifer J. Barnes
Disciplinary Counsel

Enclosures: Motion to Reopen filed in *Matter of* [redacted]

Exhibit 7

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

October 15, 2012

[redacted]

RE: [redacted]
D2011-382

Dear [redacted]:

It has recently come to the attention of this office that a "motion to file out of time" (which the Board of Immigration Appeals "(Board") treated as a motion to reconsider) was filed in *Matter of* [redacted], which contained an unsworn statement from you that [redacted] retained you to "assist" him with this motion. This motion was accompanied by a "*pro se* motion for review, reopen, request for stay of removal and stay of voluntary departure." In its decision, the Board stated that your statement was "confusing as it alternatively avers that [your] office was retained to, in some undefined manner, 'assist' with the motion, yet [redacted] apparently wrote the motion, which was then filed as *pro se*, with no indication that [redacted] filed a notice of appearance on [redacted] behalf." Your failure to file a Notice of Entry of Appearance Form, EOIR 27, is a possible violation of the Executive Office for Immigration Review ("EOIR") Rules of Professional Conduct, specifically, Rule 102(t). Rule 102(t) states that an attorney can be subject to discipline if he or he:

> Fails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner:

(1) Has engaged in practice or preparation as those terms are defined in §§ 1001.1(i) and (k)[1], and

(2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name.

8 C.F.R. § 1001.102(t).

When you assisted [redacted] with his motion, this type of legal assistance is considered both "practice" and "preparation" as defined in the federal regulations. Therefore, in the future, you will need to properly file a Notice of Entry of Appearance form with the Board or the Immigration Court. Failure to do so on a repeated basis may subject you to discipline under the Rules as described above.

Sincerely,

Jennifer J. Barnes

Jennifer J. Barnes
Disciplinary Counsel

Enclosures

---

[1] "Preparation" as defined in 8 C.F.R. §1001.1(k) means the study of the facts of a case and the applicable laws coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedures. "Practice" as defined in 8 C.F.R. § 1001.1(i) means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.

Exhibit 8

November 1, 2016

Brea,

Hope all is well. I'm providing you a copy of a file which the Judge believes that there has been possible fraud committed.

If you notice the signatures that were highlighted, the first few were done by the supposed respondent (when requesting his case to be reopened and when filing the E-42 application).

When you keep scrolling through the file (and what caught the Judges attention was that he was removed on May 30, 2016 to Mexico from El Paso, Texas), you'll notice that the signatures he provided at his criminal proceedings are nothing alike to the signatures provided in his request to reopen or filing of the application. The request was signed on May 16, 2016

Furthermore, his I-286 when he was brought into the facility does not match his signature requesting the reopening of his case.

Judge believes that the possible fraud was done by the Northwest Immigrants' Rights Project, since they show they assisted in the preparation of the documents.

Please let me know if there is anything you need from either the Judge or me.

Thank you,

Edwin

Exhibit 9

From: Parchert, Brett (EOIR)
To: Barnes, Jennifer (EOIR)
Subject: question
Date: Thursday, January 05, 2017 3:48:04 PM

Happy New Year Jenni,

I have a question: I have a case where an alien and her children were ordered removed in absentia. She has filed a "pro se" motion to reopen. However, the motion states that it is being filed with the assistance of the Northwest Immigrants Rights Project and it included an I-589 drafted by NWIRP. Yet, no one from NWIRP has entered a Notice of Appearance. I know there is an ethical prohibition in the regs about acting as a lawyer but not filing an E-28. Are there different rules for immigrants' rights groups??

Brett

Exhibit 10

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 5, 2017

Mr. Matt Adams, Esq.
Northwest Immigrant Rights Project
2601 N. Pinal Pkwy
615 2nd Ave., Suite #400,
Seattle, Washington 98104

RE: **Northwest Immigrant Rights Project**
D2017-0104

Dear Mr. Adams:

It has recently come to the attention of this office that at least one staff member from the Northwest Immigrant Rights Project (NWIRP) has attempted to advocate on behalf of Felipe Garcia-Barrera, A090 636 612, and Carmela Ramirez-Santos A202 012 796 *et. al.*, before the Executive Office for Immigration Review (EOIR) Immigration Courts, without entering a Notice of Entry of Appearance Form EOIR-28.

On June 7, 2016, a Motion to Reopen Proceedings was filed at the Tacoma Immigration Court in Mr. Garcia-Barrera's case. The motion contained a notation that NWIRP assisted in the preparation of the *pro se* motion. On November 18, 2016, a Motion to Reopen Proceedings was filed at the Seattle Immigration Court in Ms. Ramirez-Santos's case. The motion stated that it was being filed with the assistance of NWIRP and included an asylum application prepared by NWIRP Staff Attorney Maggie Cheng. In each of these cases, no one from NWIRP entered a Notice of Appearance.

In order to represent[1] individuals in matters before an Immigration Judge, a person must

[1] "Representation" as defined in 8 C.F.R. §1001.1(j) includes "preparation" and "practice." "Preparation" as defined in 8 C.F.R. §1001.1(k) means the study of the facts of a case and the applicable laws coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedures. "Practice" as defined in 8 C.F.R. § 1001.1(i) means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document,

file a Notice of Entry of Appearance Form EOIR-28. *See* 8 C.F.R. § 1003.17(a). EOIR may impose disciplinary sanctions against a practitioner who fails to file a Notice of Entry of Appearance, pursuant to the Rules and Procedures of Professional Conduct for Practitioners. *See* 8 C.F.R. § 1003.102(t). By holding attorneys accountable for their conduct, this rule makes it possible for EOIR to impose disciplinary sanctions on attorneys who do not provide adequate representation to their clients.

Here, at least one staff member from NWIRP clearly represented Mr. Garcia-Barrera and Ms. Ramirez-Santos by engaging in "preparation" and "practice" of their motions to reopen. In addition, Mr. Garcia-Barrera's signature on his Motion to Reopen appears to be inconsistent with his signature on December 21, 2015, requesting a custody redetermination by an Immigration Judge. This difference could indicate that someone other than Mr. Garcia-Barrera drafted his motion to reopen.

We conclude that NWIRP's practice of representing aliens before EOIR without filing the appropriate Notice of Entry of Appearance form is in violation of federal regulations. We ask that NWIRP cease and desist from representing aliens unless and until the appropriate Notice of Entry of Appearance form is filed with each client that NWIRP represents.

Sincerely,

Jennifer J. Barnes

Jennifer J. Barnes
Disciplinary Counsel

Enclosures: *Matter of Felipe Garcia-Barrera*
Motion to Reopen, dated May 16, 2016;
Notice of Custody Determination, dated December 21, 2015; and,

Matter of Carmela Ramirez-Santos
Motion to Reopen with Attachments, dated November 14, 2016.

---

paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.