EOIR/AILA LIAISON MEETING AGENDA QUESTIONS
October 10, 2007

1. Proposed Code of Conduct

When does EOIR plan to release its finalized Code of Conduct for Immigration Judges and BIA board members? How many comments did EOIR receive on the proposed code?

RESPONSE

The Federal Register (FR) Notice for the proposed new Codes of Conduct for the Immigration Judges and Board Members is available at http://eoirweb/library/fedreg/2006_2007/fr28jun07.pdf. The FR Notice was published on Thursday, June 28, 2007, and the public comment period closed on July 30, 2007. Eight comments were received from various public groups, individuals, and agencies. These comments are being considered and evaluated. No date is set for release. Requests for an appointment to review the public comments may be submitted in writing to the Office of the General Counsel.

2. Proposed EOIR Immigration Court Practice Manual

When does EOIR plan to release its finalized EOIR Immigration Court Practice Manual?

RESPONSE

EOIR plans to publish the Immigration Court Practice Manual by the end of 2007.

3. Monitoring of interpreters

Some AILA members have experienced ongoing problems with court interpreters, and they and other attorneys have complained repeatedly, but to no avail, about the interpreters. The same interpreters who are the subject of the complaints continue to interpret for the court.

A. What is the best way for an attorney to complain about the quality of an interpreter's work?

RESPONSE

If an attorney believes an interpreter has performed inadequately, the attorney has the following options: (1) for contract interpreters, the attorney may request that the court submit a Contract Interpreter Performance form (CIP) to the EOIR Languages Service Unit; (2) for staff interpreters, the attorney may request that the court raise the issue with the staff interpreter's supervisor; and, (3) for all interpreters, the attorney may raise the issue on appeal with the Board

of Immigration Appeals.

If there is an ongoing concern with a specific interpreter, a party may address this with the appropriate Court Administrator.

Further information on this issue can be found in the response to question 4 of the September 26, 2002 EOIR/AILA Liaison Meeting Agenda, at http://www.usdoj.gov/eoir/statspub/eoiraila0209.htm.

B. Does the EOIR have a system to monitor performance of interpreters and to provide continuing education to interpreters?

RESPONSE

Yes, there are systems in place for monitoring the performance of both staff interpreters and contract interpreters. Staff interpreters undergo a biannual performance appraisal. Contract interpreters are evaluated at least once during a calendar year. Also, spot checks are conducted randomly throughout the year for both staff interpreters and contract interpreters. A request can always be made by the court to have an interpreter's performance reviewed, a practice that will be facilitated by the introduction of digital audio recording. Currently, continuing education is not *required* of either staff interpreters or contract interpreters, though we can always request additional training for particular staff interpreters, either as a result of poor performance, limited language proficiency, or inadequate interpreting skills.

4. Detained Docket Issues

AILA is hearing reports that in many immigration courts nationwide IJs are re-setting hearing dates for detained aliens well beyond three months out. For example, if a detainee decides to contest charges of removal, the IJs are re-setting the hearing for a "prove-up" for three months or more into the future. The prove-up date is intended to give ICE time to locate records of convictions. If removability is established, then the Respondent is given an individual hearing date three months into the future. This delay is compounded if the detained respondent's individual hearing is not completed at the time set for the individual hearing. The respondent often has to wait another three months for the individual hearing. Many IJs do not issue a written or oral decision within a reasonable time period after the individual hearing and may wait over a month to issue their decision.

A. Does EOIR have a policy to expedite detained calendar cases? If so, are enough resources allocated to supporting IJs for the detained dockets so that the IJs do not have to unnecessarily prolong detained cases, because their dockets are too overwhelmed to complete cases within a reasonable time?

B. If EOIR does not have a policy to expedite detained calendar cases, would it consider implementing such a policy? With more respondents in ICE detention as

a result of stepped up enforcement by ICE, this problem will become more and more serious.

RESPONSE

EOIR considers the timely handling of detained cases to be of critical importance. The timely handling of these cases protects the interests of both the respondent and the government. Detained cases are given the highest priority, and all efforts are made to complete detained cases expeditiously. *See* Operating Policy and Procedures Memorandum 84-1, at http://www.usdoj.gov/eoir/efoia/ocij/oppm84/84-1.pdf. If there are concerns that detained cases in a specific court are not being adjudicated in a timely manner, these concerns are properly raised with the ACIJ responsible for that court. In addition, if AILA can provide information concerning courts in which detained cases are not being timely completed, EOIR will look into the matter.

5. Joseph Hearings

In the San Francisco Immigration Court, an immigrant may not be able to obtain a bond hearing pursuant to Matter of Joseph, 22 I&N Dec. 799 (BIA 1999) for two to three months. Are Joseph hearings given the same expeditious scheduling priority as bond hearings? If so, what can be done about this problem?

RESPONSE

This is a matter that is best raised directly with the San Francisco Immigration Court. While all bond hearings are treated expeditiously, *Joseph* hearings often involve special briefing and hearings on the conviction in question. Therefore, the time necessary to complete individual cases will vary. Where a party believes there has been undue delay, this concern should be raised in a motion to the Immigration Judge in the particular case. If AILA believes that this is an ongoing issue that requires attention, then specific examples, with A numbers, should be provided to the Court Administrator.

For future reference, where a concern is court-specific, EOIR suggests that AILA raise the concern with the appropriate ACIJ before putting it on the national agenda. This will allow EOIR to attempt to resolve local issues as expeditiously as possible, and it will facilitate discussion of national issues at the national liaison meeting.

Please also see the EOIR/AILA Liaison Meeting Agenda for September 30, 2004, Question 12 (dealing primarily with "front desking" of motions or pleadings refers to Joseph Hearings) at http://www.usdoj.gov/eoir/statspub/eoiraila093004.pdf

6. Telephone Access to pro bono attorneys for Detained Respondents

In July, the Government Accountability Office (GAO) released a report entitled, in part, "Telephone Access Problems Were Pervasive at Detention Facilities" (GAO-07-875, July 6, 2007) **http://www.gao.gov/cgi-bin/getrpt?GAO-07-875**. The GAO's report of problems with telephones for immigrants in detention is consistent with our experience. Even where the "pro bono platform" is functioning, there are often complicated instructions for using the platform in the particular jails where detainees are held. This reduces the use of the system, and probably results in more clients proceeding forward pro se, or being unable to find an attorney until later in the process. The governing regulations for the EOIR's free legal services list do not specify precisely what may be listed along with an association's name, nor do they specify the form of the list itself. A review of the free legal services lists now in use shows that a majority of the agencies listed include not only their address and telephone number, but other information about the agency, such as website address, types of cases accepted, and whether or not they represent detained individuals.

A. Would EOIR be open to including brief instructions on the free legal services list that tell a detained individual in removal proceedings how to use the pro bono platform to contact the nonprofit agencies on the pro bono platform? These instructions might need to be detention location-specific, in Immigration Courts that handle detained cases from more than one jail or detention center.

B. IF EOIR is interested in doing this, would it be preferable to develop a separate page on how to make calls from detained settings, or would it be better to incorporate this information into listings of individual agencies which accept calls through the pro bono platform?

RESPONSE

In general, this issue is best addressed with DHS, as DHS is responsible for aliens detained during proceedings. In addition, rules regarding telephone access differ between detention facilities, making it difficult to develop a uniform set of guidelines for contacting attorneys and organizations on the list of free legal service providers. Nevertheless, if AILA can elaborate on the problems relating to access to telephones at specific detention facilities, EOIR will look into the issue and determine whether it can be of assistance.

7. Public Hearings Being Compromised in Detention Facilities

AILA members report that in some ICE detention facilities across the country, family members and friends are not permitted to attend removal hearings, because the detention facility where the hearing is being conducted will not allow the public to attend the hearings. For example, some detention facilities have rules prohibiting children under the age of fourteen from attending hearings in the facility. Often the children are providing critical testimony for their parents and need to be present to testify. At a minimum, however, the children have a right to

witness the proceedings for their parent or relative. Other facilities limit the number of attendees to four or five. Often the IJs themselves decide which family members will be permitted to attend the hearing, and other family and friends must wait in the lobby of the prison. In these situations, neither the detention facility nor the courts makes any apparent effort to enable the public and others to observe open hearings. The IJs never cite security or space concerns when denying access to attendees. If the detention centers are in fact regulating the public's access because of lack of infrastructure or for internal security reasons, can EOIR continue to lease space from detention centers which impinge on the public's access to the immigration courts? Is it EOIR's position that immigration court hearings in detention facilities are not open to the public? Please comment.

RESPONSE

Please remember that DHS, not EOIR, leases space at detention facilities. EOIR neither dictates the terms of the lease nor controls the common areas. In addition, for hearings at detention facilities, compliance with the facility's security restrictions is required. Further, under 8 C.F.R. § 1003.27, Immigration Judges have the general discretion to limit attendance at hearings in certain circumstances. Specifically, 8 C.F.R. § 1003.27(a) states that, "[d]epending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance" at a hearing. In addition, 8 C.F.R. § 1003.27(b) states that, "[f]or the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing."

If an attorney feels that a particular Immigration Judge has improperly prevented anyone from attending a hearing or testifying in a case, the former is properly addressed with the appropriate ACIJ and the latter in an appeal to the Board of Immigration Appeals.

8. Bond Hearings

AILA members have voiced concerns about the current policy of IJs not recording bond proceedings and hearings. AILA suggests that EOIR adopt a uniform policy of having IJs record bond hearings. The fact that EOIR has introduced a new recording system in the court presents a good opportunity to adopt a policy of recording bond hearings, so that where it becomes useful after the fact to have such a record, it will exist. It would give more transparency to the process, and would also permit Assistant Chief Immigration Judges to monitor the behavior of individual IJs, and to confirm or reject allegations of IJ abuse in bond proceedings.

One significant benefit of recording bond proceedings is that it would permit the IJ to issue an oral bond decision, in cases where one party indicates an intention of appealing. A contemporaneous oral bond decision would save significant judicial resources by permitting the IJ to issue a decision while the case was fresh in his or her mind, and would free him/her from the necessity of producing a written bond memorandum. The IJ could then order production of the transcript. This would permit a streamlined bond appeal because it obviate the Board's need to request the IJ to produce a bond memorandum.

To be clear, while AILA recommends that all bond proceedings be recorded, we do not suggest that all bond proceedings be transcribed. Rather, we think that where there is a bond appeal, an IJ should be delegated the authority to suggest / order production of transcripts where the IJ concludes it would substantially assist the Board in reviewing the bond appeal.

RESPONSE

In question 6(f) of the October 17, 2005 EOIR/AILA Liaison Meeting Agenda, AILA made a similar recommendation. In response, EOIR, in relevant part, stated:

> To enable parties to secure hearings before Immigration Judges as promptly as possible, bond proceedings are less formal than removal proceedings. *See Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). The structure of bond proceedings allow for Immigration Judges to conduct bond redetermination hearings without undue delay or cumbersome formality. If the regulations required that the Immigration Judge record bond proceedings, the transcription process would delay the adjudication of appeals by multiple weeks. Parties are free to present arguments to the Board based on the hearings before the Immigration Judge and may highlight factors affecting either perceived danger to persons or property or perceived flight risk. The absence of a transcript does not preclude the full presentation of those issues to the Board.

For the reasons quoted above, EOIR is not contemplating revising the regulations to require that bond hearings be recorded. The full response to question 6(f) of the October 17, 2005 EOIR/AILA Liaison Meeting Agenda is available at http://www.usdoj.gov/eoir/statspub/eoiraila101705.pdf.

9. Limited Appearances for Bond Proceedings

AILA wishes to raise the possibility of limited attorney appearances for bond proceedings. While we recognize that the Board has issued a published decision on this issue, we ask that EOIR consider a regulatory or at least a policy change to the rule. We ask that EOIR allow attorneys to either enter an appearance limited to the bond only, or, in the alternative, to allow attorneys to enter an appearance limited to the bond only, and then to then withdraw as attorney with notice to the respondent client and assurance to the Court that the respondent has been notified of the next hearing date, etc.

With more stepped up ICE enforcement and the resulting increasing numbers of detained respondents, this issue has become particularly pressing. ICE transfers detained respondents anywhere it wishes in the United States, regardless of where the respondent normally resides, or has close family ties. As a result, many detained respondents are represented by an attorney on a bond hearing, are then released on bond, and then return to their normal place of residence. The attorney who represented the respondent on the bond hearing may be located many miles away

from the respondent's home. That attorney will not be able to represent the respondent at his continued hearings, but because the attorney was not allowed to enter a limited appearance, he or she continues to be the attorney of record. Many attorneys, fearful of being forced to continue representing a client who bonds out and moves to another jurisdiction, simply refuse to take on representation of detained respondents. This limits representation of detained respondents, which in turn both severely diminishes the respondent's ability to be heard and slows down the efficient working of the immigration court.

If an attorney were allowed to enter a limited appearance for the bond hearing, more attorneys would be willing to accept detained cases. This would be very similar to what happens when a respondent represented by an attorney wishes to appeal an IJ's decision. The attorney's representation does not extend beyond the time of the IJ's decision, and the respondent must retain the same attorney or another attorney for an appeal to the Board.

It appears that many local IJs already have policies of permitting pro bono counsel to enter and then withdraw. AILA believes that those good practices suggest that such a policy should be nationwide and should apply to all attorneys, whether pro bono or private bar. Please comment.

RESPONSE

EOIR appreciates AILA's comments. This is an issue that is very much under consideration by EOIR.

10. Permitting attorneys to file notices of appearances before NTA filing

Attorneys around the country report that EOIR Clerk's Offices in their jurisdictions will not allow a respondent's attorney to enter an appearance before ICE files a Notice to Appear. Various rationales are given (e.g., EOIR lacks jurisdiction; EOIR has no file in the case), but the result is the same. The attorney is not entered as attorney of record before the NTA is filed. Permitting an attorney to file an E-28 before the NTA is filed would help avoid the number of cases where notice to the respondent is ineffective and an in absentia order results (which can result in Motions to Rescind, leading to more work for the Court as well as potential prejudice to the client).

A. AILA knows of some EOIR courts that permit such filings. Many courts do not. Does EOIR have a national policy which permits such filings? If such a policy exists, could it be (re)communicated to local Immigration Court administrators? If such a policy does not exist, would EOIR consider implementing such a policy?

B. This issue also arises in the context of stipulated removal orders. During the time period between a pro se alien's signing a joint motion for a stipulated removal order and the point at which that motion is submitted to the Immigration Judge,

sometimes the alien retains an attorney and thereafter wishes to withdraw the motion. If the attorney could file an E-28 and a withdrawal of the stipulation, this would help prevent the entry of stipulated orders where the alien is no longer in agreement to be removed, and would also prevent unnecessary work in adjudicating a Motion to Reopen after the fact.

RESPONSE

In question 6 of March 22, 2006 EOIR/AILA Liaison Meeting Agenda, available at http://www.usdoj.gov/eoir/statspub/eoiraila032206.pdf, AILA made a similar recommendation. In response, EOIR, in relevant part, stated:

> EOIR will not accept an EOIR-28 form unless and until an NTA has been filed, except in a bond determination hearing before an immigration judge or a bond appeal before the Board (Form EOIR-27). Attorneys are encouraged to use the 1-800 number to ascertain whether the NTA has been filed so they can enter an appearance form.

EOIR agrees that uniformity in this area is appropriate, however, and will raise this issue with the Court Administrators.

Please also see the EOIR/AILA Liaison Meeting Agenda for September 30, 2004, Question 17 (similar issue) at http://www.usdoj.gov/eoir/statspub/eoiraila093004.pdf.

11. Stipulated Removal Orders

We were recently informed that local ICE counsel in Chicago had filed a stipulated removal order request with the EOIR in "Washington" - we assume this means Falls Church, Virginia. The incident apparently occurred during the one-week IJ training session.

A. Does EOIR in Falls Church have jurisdiction over respondents detained in Chicago?

RESPONSE

During the 2007 Immigration Judges' Conference in Washington, D.C., certain Immigration Judges were designated to handle emergency bond requests that arose during the conference. EOIR is not aware that any stipulated removal orders were signed. If AILA can provide information about specific cases, EOIR will look into this.

B. Does EOIR have any formal or informal rules permitting stipulated removal orders to be filed at a site other than the generally proper venue for NTAs?

RESPONSE

There are no such rules. As with all documents related to a case, requests for stipulated removal orders should be filed at the Immigration Court with administrative control over the hearing location. The list of filing locations is available on the EOIR website at http://www.usdoj.gov/eoir/vll/courts3.htm.

Please also see the EOIR/AILA Liaison Meeting Agendas for September 26, 2002, Question 8 and April 11, 2007, Question 4 (similar issues) at http://www.usdoj.gov/eoir/statspub/eoiraila0209.htm and http://www.usdoj.gov/eoir/statspub/eoiraila041107.pdf.

12. Improper ex parte conduct between ICE and EOIR

AILA members report ongoing issues with ex parte conduct/conversations between ICE counsel and EOIR. AILA urges EOIR to consider its comments on the EOIR Proposed Rules for EOIR and the BIA.

One troubling example has emerged. In at least one jurisdiction, IJs and the local ICE assistant chief counsels are reportedly "detailed" together to other courts/ICE offices and travel together to such assignments. This is the impression given openly by the Court and the ICE assistant chief counsels. The IJ who travels on such detail has been heard to refer to the ICE assistant chief counsel as "my TA." AILA feels that the practice of having an IJ and the ICE assistant chief counsel assigned as a pair or "team" should be avoided, as it gives the appearance of impropriety. Please comment.

RESPONSE

EOIR has no control over Trial Attorneys detailed by ICE. There is no EOIR policy that particular Immigration Judges and Trial Attorneys are "paired" on detail. EOIR agrees that it is unacceptable for an Immigration Judge to refer to a Trial Attorney as "my TA." Such concerns are properly addressed to the appropriate ACIJ.

Please also see the EOIR/AILA Liaison Meeting Agendas for November 29, 2001, Question 16 and March 27, 2003, Question 7 (similar issues) at http://www.usdoj.gov/eoir/statspub/eoiraila0111.htm and http://www.usdoj.gov/eoir/statspub/eoiraila0303.pdf.

13. New Computer System for EOIR

EOIR has changed over to a new information management program, CASE, in many, if not all of its courts. According to the announcement posted in the courts, the new program will pave the way for electronic filing.

A. Have court employees experienced any problems with the new system (other than the normal issues associated with getting used to a new system)

RESPONSE

No.

B. The announcement indicates that the use of the new system may result in delays. What impact will CASE have on court dockets, scheduling, and IJ decisions?

RESPONSE

As with any new computer system, there is a learning curve. However, the courts have been allocated overtime to counter any impact on operations.

C. Please outline EOIR plans regarding electronic filing in the court.

RESPONSE

In September, 2007 EOIR completed the implementation of its integrated case management system, known as the Case Access System for EOIR (CASE). In addition to CASE, over the last few years EOIR has been designing, building, and testing a Digital Audio Recording (DAR) system that will replace the antiquated tape recorders currently used in immigration courts. In August, 2007 EOIR piloted the DAR system in Bloomington, MN and then in September, the DAR system was piloted in York, PA. A third site, Memphis, TN, will be piloted in October. EOIR plans to begin the nation-wide implantation of DAR in January 2008. It is expected that full implementation of DAR will take until 2010. EOIR is still committed to electronic filing. Once the DAR implementation is successfully underway, we will begin other electronic court projects, such as e-filing; however, the timing for these projects has not been determined at this time.

Please note that Question C (electronic filing) has been the subject of numerous prior AILA agendas dating back to 2000. The links to these prior questions and responses in reverse date order are as follows:

October 18, 2006, Question 9(a) at
http://www.usdoj.gov/eoir/statspub/eoiraila101806.pdf;
March 22, 2006, Question 8 (c) at
http://www.usdoj.gov/eoir/statspub/eoiraila032206.pdf;
March 16, 2005, Question 1 at http://www.usdoj.gov/eoir/statspub/eoiraila031605.pdf;
March 4, 2004, Questions 8 and 9 at
http://www.usdoj.gov/eoir/statspub/eoiraila0404b.htm;
September 25, 2003, Question 25 at http://www.usdoj.gov/eoir/statspub/eoiraila0903.pdf;
March 27, 2003, Question 26 at http://www.usdoj.gov/eoir/statspub/eoiraila0303.pdf;

September 26, 2002, Question 23 at
http://www.usdoj.gov/eoir/statspub/eoiraila0209.htm;
November 29, 2001, Question 26 at
http://www.usdoj.gov/eoir/statspub/eoiraila0111.htm;
November 8, 2000, Question 8 at http://www.usdoj.gov/eoir/statspub/ailaqa.htm; and
March 30, 2000, Question 22 at http://www.usdoj.gov/eoir/statspub/qaeoiraila.htm.

14. EOIR Recording System and Rules

With the awaited introduction of the new EOIR Immigration Court Practice Manual, members would like to see some uniform rules regarding the EOIR Recording System and its use, so that they will know what to expect when they are in court. For example, some IJs tend to have quite a bit of introductory discussion with counsel about the nature of the case, relief being requested, motions to be filed and dates for their filing, etc., all before the tape is turned on, or they turn the tape off and then discussion arises about one or more such items. AILA understands that it is wasteful to leave the tape running throughout a full session of court. However, for clarity and completeness, AILA believes that a uniform rule on when to start a tape is very important to everybody concerned. Some members report participating in discussing issues when the tape is off, and then realizing after the fact that the IJ (and sometimes everyone else) forgot to mention one or more of those issues summarized when the tape is turned on. After numerous cases in one day, it can be virtually impossible for anyone to remember exactly what was said when the tape was off and when it was on, so the IJs do not want to go back and listen to the tapes (wasting court time and resources), and the attorneys do not want to offend an IJ by arguing that an issue was "dropped" when it really was covered. Where the issue is not covered on the tape, it then puts the client and the lawyer in a tremendously difficult position on appeal, and if this happens repeatedly with the same IJ, it may appear that the IJ is trying to manipulate the record, when all he or she is trying to do is to preserve time and resources.

Would EOIR consider providing for a uniform policy regarding starting and stopping times for the taping system?

RESPONSE

Guidelines for off-the-record conversations are contained in Operating Policy and Procedures Memorandum (OPPM) 03-06, at
http://www.usdoj.gov/eoir/statspub/eoiraila041107.pdf. OPPM 03-06 states, in relevant part, as follows:

> Immigration Judges should limit all off-record dialogue. On rare occasions, the Immigration Judge may authorize such an off-record dialogue when necessary to the fair, expeditious and proper conduct of the hearing. The Immigration Judge may initiate the decision to go off-record or a party may make such a request. In these instances, [the] Immigration Judge should inform the parties that off-record discussions will be summarized on the record. The decision to authorize such an off-record

discussion is solely within the discretion of the Immigration Judge, and the Immigration Judge should make clear on the record that the parties are aware that the tape recorder is being turned off.

When the off-record discussion is completed, whether initiated by the Immigration Judge or by the parties, the Immigration Judge shall summarize the off-record discussion immediately upon returning to the record. Additionally, the Immigration Judge must ask the parties if the summary is a true and complete representation of the off-record discussion and ask the parties if they have anything to add to the summary.

EOIR is not contemplating amending OPPM 03-06 or providing any further guidance on this issue. If an attorney feels that an Immigration Judge has failed to follow the guidelines of OPPM 03-06, the attorney should contact the appropriate ACIJ.

This issue was previously discussed at the AILA/EOIR liaison meeting held on November 29, 2001, Question 15 at http://www.usdoj.gov/eoir/statspub/eoiraila0111.htm.

15. Change of Venue

With greater ICE enforcement, raids, etc, more and more non-citizens are being sent across the country to detention centers far from where they reside.

A. Would EOIR consider implementing a more expansive set policy regarding change of venue requests for non-detained respondents? Some IJs in some courts simply will not grant change of venue requests, in some cases even when the DHS joins in the motion and it is clear that there that the respondent has no connection to the venue, other than having been transferred there by ICE.

B. Some IJS and court staff set up roadblocks to filing motions to change venue, allowing them to reject even unopposed motions to change venue. This creates great difficulties and expenses for respondents, some of whom are forced to travel, sometimes for days by bus or car, because they do not have identification that is accepted by airlines. AILA understands that it is possible to file interlocutory appeals and regular appeals to the BIA of denial of change of venue requests; however, respectfully points out that such appeals are time consuming and expensive, and are not resolved before the respondent has to travel to the court that refused to change venue.

RESPONSE

Immigration Judges adjudicate motions to change venue on a case-by-case basis in accordance with 8 C.F.R. § 1003.20. Guidelines on motions to change venue are found in Operating Policy and Procedures Memorandum 01-02, at http://www.usdoj.gov/eoir/efoia/ocij/oppm01/OPPM01-02.pdf. If a party believes that

Immigration Judges or court staff are acting improperly to prevent parties from filing motions to change venue, those concerns are properly raised with the appropriate ACIJ.

Further information regarding motions to change venue can be found in the responses to the following EOIR/AILA Liaison Meeting Agenda questions:

October 18, 2006, Question 8, at http://www.usdoj.gov/eoir/statspub/eoiraila101806.pdf;
September 30, 2004, Question 11, at
http://www.usdoj.gov/eoir/statspub/eoiraila093004.pdf.

Change of venue issues previously discussed in the following AILA/EOIR liaison meeting agendas may be found as follows:

October 18, 2006, Question 8 at http://www.usdoj.gov/eoir/statspub/eoiraila101806.pdf;
March 22, 2006, Questions 6 and 7 at
http://www.usdoj.gov/eoir/statspub/eoiraila032206.pdf;
September 30, 2004, Question 11 at
http://www.usdoj.gov/eoir/statspub/eoiraila093004.pdf;
March 4, 2004, Question 18 at http://www.usdoj.gov/eoir/statspub/eoiraila0404b.htm;
and
November 29, 2001, Question 22 at
http://www.usdoj.gov/eoir/statspub/eoiraila0111.htm.

16. ICE failure to file NTA with EOIR

AILA has heard of increased incidences of ICE/USCIS issuing NTAs with an electronically calendared master calendar hearing date, and subsequently failing to file the NTA with the court. An AILA member reported problems that his clients were experiencing in EOIR/Los Angeles when ICE/USCIS failed to file an NTA for long periods of time. When ICE and/or USCIS has still not filed the NTA with the court for more than a year after electronically calendaring a master calendar hearing, the EOIR toll free number still indicates "your case is currently pending." Failure to purge the case from EOIR's electronic database severely prejudices a respondent who is consequently unable to affirmatively file an application for relief with the USCIS, which, due to its electronic interface with EOIR, continues to believe that the respondent remains in removal proceedings and that therefore exclusive jurisdiction over the respondent's application lies with the immigration court. If EOIR will not require the government to either prosecute or dismiss a case within a reasonable amount of time, can a process be instituted whereby a respondent can ask EOIR to purge a case from its electronic database?

RESPONSE

The Los Angeles Immigration Court makes every effort to designate cases as "Failure to Prosecute" within the case management system upon review of reports listing NTA's generated by ICE/USCIS but not received by the Court. This action would effectively close the proceeding and be reflected as such on the toll free number. If AILA believes that this is an ongoing issue

that requires attention, then specific examples, with A numbers, should be provided to the Court Administrator.

For future reference, where a concern is court-specific, EOIR suggests that AILA raise the concern with the appropriate ACIJ before putting it on the national agenda. This will allow EOIR to attempt to resolve local issues as expeditiously as possible, and it will facilitate discussion of national issues at the national liaison meeting.

Issues involving ICE delays or failures to file NTAs with EOIR have also been discussed during the following AILA/EOIR liaison meetings:

November 29, 2001, Questions 18 and 19 at
http://www.usdoj.gov/eoir/statspub/eoiraila0111.htm;
March 22, 2001, Questions 1, 2 and 3 at
http://www.usdoj.gov/eoir/statspub/eoirailaMarch01.htm; and
November 8, 2000, Question 10 at http://www.usdoj.gov/eoir/statspub/ailaqa.htm.

17. The Clock-The Clock

The clock issues never seem to stop, even though the clock does.

A. An AILA member who practices in EOIR Los Angeles writes that she has been experiencing clock problems with court personnel "zeroing" the clock for certain affirmative applicants for asylum whose cases have been referred to the Court. The cases were filed within one year of the applicant's arrival in the U.S. and the applicants complied with all biometrics requests and appeared at all interviews. The EOIR staff has been categorizing the cases as defensive asylum cases and then has "zeroed" out the clock. The court personnel then will not start the clock until the respondent's first appearance in court. Please comment.

RESPONSE

In general, when an asylum application is referred from DHS to the Immigration Court, the clock should be running at referral if the respondent has complied with all biometrics requirements and attended all interviews. This general rule may be affected by the circumstances of specific cases.

For cases that are pending before an Immigration Judge, if a party feels that the asylum clock was incorrectly stopped, the party should first write to the Immigration Judge or Court Administrator requesting that the clock be adjusted. If unsatisfied with the response, the party may write to the appropriate ACIJ.

B. Who controls the clock once an asylum case is on appeal at the BIA, and the local court no longer has the file?

RESPONSE

When a case is pending at the Board, asylum clock questions should be directed to the attention of the Office of General Counsel (OGC), who works with OCIJ to respond appropriately to the clock inquiry. Practitioners interested in additional information about the asylum clock and asylum clock inquiries may consult questions 3 and 4 of the AILA-EOIR liaison agenda questions dated March 16, 2005, available at http://www.usdoj.gov/eoir/statspub/eoiraila031605.pdf and October 17, 2005, questions 1, 2 and 3 at http://www.usdoj.gov/eoir/statspub/eoiraila101705.pdf.

C. AILA members have reported IJs accepting an I-589 for "withholding only" and then waiting until the individual calendar hearing to decide whether the individual is entitled to file for asylum. This has occurred even when the I-589 was filed within one year of the respondent's arrival. This prevents respondents from applying for an EAD. Please comment.

RESPONSE

In this situation, if a party feels that the asylum clock was improperly stopped, the issue should be raised as described in (A), above.

Further information regarding the asylum clock can be found in the responses to the following EOIR/AILA Liaison Meeting Agenda questions:

April 11, 2007, Question 2 at http://www.usdoj.gov/eoir/statspub/eoiraila041107.pdf;
March 22, 2006, Question 17, at http://www.usdoj.gov/eoir/statspub/eoiraila032206.pdf;
October 17, 2005, Questions 1, 2, and 3, at http://www.usdoj.gov/eoir/statspub/eoiraila101705.pdf;
March 16, 2005, Questions 3 and 4 at http://www.usdoj.gov/eoir/statspub/eoiraila031605.pdf;
March 27, 2003, Question 8 at http://www.usdoj.gov/eoir/statspub/eoiraila0303.pdf;
March 7, 2002, Question 2 at http://www.usdoj.gov/eoir/statspub/eoiraila0203.htm;
March 30, 2000, Question 11 at http://www.usdoj.gov/eoir/statspub/qaeoiraila.htm.

18. Assistant Chief Immigration Judges (ACIJs)

AILA has been very pleased with the appointment of local ACIJs in certain courts.

A. Does EOIR plan to assign any other local ACIJs? If so, to what courts will they be assigned?

RESPONSE

Currently, there are no plans to assign local ACIJs to additional courts. However, EOIR welcomes AILA's input concerning appropriate locations for placing local ACIJs in the future.

B. Does EOIR policy require ACIJs to respond to written complaints filed by attorneys or respondents? Short of filing a formal complaint against an IJ, what should an attorney do if he or she files such a legitimate written complaint about ongoing problems with an IJ, and the ACIJ never acknowledges or responds to the complaint?

RESPONSE

ACIJs respond to written complaints regarding Immigration Judge conduct filed by anyone who lodges such a complaint or concern. If an attorney feels that he or she has not received a response to a complaint regarding an Immigration Judge, the attorney should contact MaryBeth Keller, the ACIJ with responsibility for oversight of all complaints regarding Immigration Judges.

19. Attorney General's 8/06 Directives

One of the AG's directives provided for OIL to bring to the Board's attention instances of IJ misconduct or IJ or Board mistakes, on cases pending before the Federal Court.

A. Has EOIR implemented this directive? If so, has EOIR set up any procedures for how OIL may bring such instances to the Board's attention? In order to avoid ex-parte communication, it is important that OIL, before it brings such an instance to the Board's attention, notify the attorney for the Alien Petitioner or the pro se Alien Petitioner in writing of the sum and substance of the communication OIL will have with the Board. Please comment.

RESPONSE

On August 9, 2006, the Attorney General issued a number of directives that included a directive titled Improvements to Streamlining Reforms. Directive Number 12 asks that the Assistant Attorney General for Legal Policy consult with EOIR and the Civil Division to draft a proposed rule that would return cases to Board for reconsideration when OIL identifies a case that has been filed in federal court and, in OIL's view, warrants reconsideration. To the extent that this question refers to Directive Number 12, the Department is examining options for a process to implement this directive. OIL can and does, however, file a motion to remand in a federal case where an OIL attorney believes that a case should be returned to the Board for reconsideration.

Directive Number 7 ("Mechanisms to Detect Poor Conduct and Quality") asks that the Director of EOIR establish a regular procedure for Board Members and OIL attorneys to report

adjudications that reflect immigration judge temperament problems or poor Immigration Court or Board quality to the Director of EOIR and to the Chief Immigration Judge and the Chairman of the Board of Immigration Appeals. To the extent that this question refers to Directive Number 7, EOIR and OIL have a procedure whereby if an OIL attorney would like to notify EOIR of an adjudication that reflects immigration judge temperament problems or poor Immigration Court or Board quality, the OIL attorney may contact the Office of the General Counsel. OIL attorneys do not directly contact the Board Members or Immigration Judges. In the case of immigration judge temperament problems, the General Counsel's Office notifies the Assistant Chief Immigration Judge for Conduct and Professionalism of the adjudication in question. As noted below, an alien's attorney or a pro se alien may also directly contact either the Assistant Chief Immigration Judge for Conduct and Professionalism or the Assistant Chief Immigration Judge with responsibility for the particular Immigration Court regarding specific immigration judge conduct issues.

B. May the attorney for the Alien Petitioner or the pro se Alien Petitioner, with proper written notice to OIL bring such an instance to the Board's attention? If so, whom should the attorney contact?

RESPONSE

Currently, the only process by which to bring to the attention of the Board any error the parties believe the Board has committed is to file a motion to reconsider with the Board. An alien's additional remedy lies in filing a petition for review with the appropriate federal circuit court. Where a petition for review has been filed, the parties should be in communication with OIL or the US Attorney's Office handling the matter. If the matter involves immigration judge temperament problems, the attorney for the alien petitioner or the pro se alien petitioner, may, at any time, contact the Immigration Judge's ACIJ or the Assistant Chief Immigration Judge for Conduct and Professionalism to report any instances of misconduct or poor quality decisions.

Various aspects of the AG's 8/06 Directives have appeared in the following AILA/ EOIR Agendas as follows:

April 11, 2007, Question 1 at http://www.usdoj.gov/eoir/statspub/eoiraila041107.pdf; and October 18, 2206, Questions 1 and 2 at http://www.usdoj.gov/eoir/statspub/eoiraila101806.pdf.

20. BIA Motions to Reopen

Please reiterate the average processing times or goal processing times for the Board to adjudicate motions.

RESPONSE

The complexity and circumstances of each case varies which may extend the average processing time for motions. The average processing time during FY 2007 for newly filed Motions to Reopen is 55 days in cases involving detained aliens, and 106 days for cases involving aliens who are not detained.

A. Is there a point person at the Board to whom attorneys or appellants can direct an inquiry if the motion is pending significantly longer than normal processing times?

RESPONSE

Inquiries may be directed to the Chief Clerk of the Court for the Board of Immigration Appeals. A motion to expedite or a status request letter may be sent to the attention of the Chief Clerk. See also Board Practice Manual, Chapter 6.5 at http://www.usdoj.gov/eoir/vll/qapracmanual/pracmanual/chap6.pdf .

B. AILA understands that a motion to remand normally would not be adjudicated out of turn, but is there a procedure by which the Board would expedite joint or unopposed motions?

RESPONSE

The Board of Immigration Appeals Clerk's Office screens incoming motions for circumstances that would allow taking a case out of the stream of normal processing and bring it to the attention of a panel immediately. Where the Clerk's Office receives a response to a motion from either party, which either joins the motion or affirmatively states that the responding party is not opposed to the motion, the record of proceedings is pulled from processing and sent to a panel for immediate adjudication.

C. Must the BIA wait for the transcript of proceedings before ruling on all motions? For example, where a conviction has been overturned, or where the DHS joins or agrees not to oppose a motion, it would save time and money for EOIR not to require the transcript or not to require briefing on the merits to be completed.

RESPONSE

The BIA does not wait for the transcript of proceedings before ruling on all motions. When it is possible to adjudicate a motion to remand without the transcript, the record of proceedings is pulled from processing and sent to a panel for immediate adjudication. In most cases that involve a motion to remand in a case appeal, a transcript has already been requested and served on the parties prior to receiving the parties position on the case. The need for a transcript is assessed on a case by case basis.

Questions involving motions to reopen have been raised in prior AILA / EOIR liaison meeting agendas as follows:

March 22, 2006, Question 1 at http://www.usdoj.gov/eoir/statspub/eoiraila032206.pdf;
October 17, 2005, Questions 18 and 21 at
http://www.usdoj.gov/eoir/statspub/eoiraila101705.pdf;
September 30, 2004, Questions 4 (B) and (C) and 14 at
http://www.usdoj.gov/eoir/statspub/eoiraila093004.pdf;
March 4, 2004, Questions 15 and 16 at
http://www.usdoj.gov/eoir/statspub/eoiraila0404b.htm;
September 25, 2003, Question 17 and 18 at
http://www.usdoj.gov/eoir/statspub/eoiraila0903.pdf;
September 26, 2002, Question 12 at
http://www.usdoj.gov/eoir/statspub/eoiraila0209.htm;
March 7, 2002, Question 17 at http://www.usdoj.gov/eoir/statspub/eoiraila0203.htm; and
November 8, 2000, Question 7 at http://www.usdoj.gov/eoir/statspub/ailaqa.htm.

21. Motions for Precedent Decisions

The Board seems to be issuing more precedent decisions, which is an excellent development. Would EOIR consider allowing parties (respondents and DHS alike) to file a motion to designate a decision as a precedent (with proper notice to the other side, of course)?

RESPONSE

The Board issues precedent decisions to provide clear and uniform guidance to the Immigration Judges, to the parties in the case, and to the general public on the proper interpretation and administration of the Immigration and Nationality Act and its implementing regulations. The Board welcomes suggestions on publishing its decision. Any such requests should be made in writing to the Board of Immigration Appeal's Chief Clerk of the Court. Also, before the Board issues its decision, the parties are invited to articulate in their briefs any request to publish the decision. See also Board Practice Manual, Chapter 4.1(d) at http://www.usdoj.gov/eoir/vll/qapracmanual/pracmanual/chap4.pdf

Questions involving precedent decisions were also discussed in prior AILA / EOIR liaison meeting agendas as follows:

October 18, 2006, Question 1(d) at
http://www.usdoj.gov/eoir/statspub/eoiraila101806.pdf and
March 4, 2004, Question 2 at http://www.usdoj.gov/eoir/statspub/eoiraila0404b.htm.