



EOIR's Judicial Conduct and Professionalism Unit

Daniel Swanwick
Acting Counsel to the Deputy Director

January 3 - 5, 2023
New Supervisory Judge Training



ORGANIZATIONAL STRUCTURE AND PERSONNEL

- OOD – Judicial Conduct and Professionalism Unit (JCPU)
 - Savannah Turner, Joseph Robertson
- OCIJ – ACIJs, Regional DCIJs, Principal DCIJ, CIJ
- ELR



RECEIPT OF COMPLAINTS

- Directly to the Judicial Conduct and Professionalism (JCPU)
 - Judicial Conduct mailbox (Judicial.Conduct@usdoj.gov)
 - Physical mail to HQ
 - BIA IJR memos (emailed to JCPU and CIJ)



RECEIPT OF COMPLAINTS

- Email/Letter to ACIJ
 - Forward the message to the Judicial Conduct mailbox
 - We will triage, docket, etc.



RECEIPT OF COMPLAINTS

- Phone call or in-person contact with ACIJ
 - Helpful to clarify – “is this a complaint?”
 - Try to get it in writing so you can forward it to JCPU without having to memorialize it yourself



RECEIPT OF COMPLAINTS

- Other
 - Something comes up in your review of an IJ's hearings
 - News coverage
 - Appellate criticism
 - OPR/OIG referral
 - Etc.



SOURCES

- Respondents
- Attorneys
- DHS
- EOIR
- BIA
- Third parties (e.g., relatives)



THRESHOLD ISSUES

- Active (not retired) IJ?
- Alleges judicial misconduct?
 - Conduct that may adversely affect the fair, effective, or expeditious administration of the work of EOIR's adjudicating components
 - Judicial misconduct vs. general misconduct not related to judicial role
 - Inquiry: Is there a nexus to the courtroom?



THRESHOLD ISSUES

- Confidentiality
 - Can't guarantee
 - You may offer the putative complainant a choice:
 - A) Bring information to our attention
 - May remain anonymous
 - But no guarantee that a complaint will be identified
 - B) File a formal complaint
 - We will then process it, but the complainant's name will be attached



TRIAGE & INVESTIGATION

- JCPU triages and docketed then assigns to the ACIJ via a complaint email
 - Initial fact-gathering
 - 60-day target date for resolution
 - Completed intake sheet
 - Copying the R-DCIJ, P-DCIJ, CIJ, and ELR



TRIAGE & INVESTIGATION

- JCPU does the initial investigation
 - Typically limited to reviewing written complaint and anything we can access from our desks
 - CASE history and notations
 - DAR
 - Transcribed hearings
 - Scanned Board and IJ decisions



TRIAGE & INVESTIGATION

- ACIJs must notify IJ and provide opportunity to respond to allegations
 - Exception 1: Notification would compromise ongoing investigation, or contrary to law/policy (e.g., OIG referral)
 - Exception 2: ACIJ need not give IJ an opportunity to respond if ACIJ can dismiss the matter without the IJ's input; in that case, notify the IJ after the fact
- Anything beyond triage must be *initiated* (but not necessarily carried out) by the ACIJ
 - Request and review ROP
 - Complainant and witness interviews or statements
 - DAR spot checks to look for patterns



TRIAGE & INVESTIGATION

- Investigation may be carried out by:
 - ACIJ
 - JCPU staff
 - ELR
 - Other EOIR/OCIJ staff (*potentially)



RELATIONSHIP WITH OUTSIDE INVESTIGATORY OFFICES

- Responsibility of everyone to issue spot
 - JCPU
 - ACIJ
 - DCIJIs
 - ELR
 - OGC generally



FINAL DISPOSITIONS - DISMISSAL

- Frivolous
- Merits-related
- Disproven
- Cannot be substantiated
- Fails to state a claim



FINAL DISPOSITIONS - CONCLUDED

- Corrective Action Already Taken
- Intervening Events Make Action Unnecessary



FINAL DISPOSITIONS – CORRECTIVE/DISCIPLINARY

- Oral Counseling
 - Informal discussion, supervisory function, not necessarily “culpable”
- Written Counseling
 - A little more formal/weighty, ELR should be involved



FINAL DISPOSITIONS – CORRECTIVE/DISCIPLINARY

- Formal Discipline
 - Written reprimand
 - Suspension
 - ELR must be involved
- Other
 - Individualized training
 - Work with LERS and ELR
 - PIP
 - Rare



OCIJ REFERRALS TO THE BIA

- Intra-EOIR referrals now allow IJs to raise issues with Board Member conduct
 - IJ raises it with CIJ (or designee), who may refer the matter to the JCPU for docketing
- Mirrors the process by which the BIA may refer issues of IJ conduct to the JCPU

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QUESTIONS?

Judicial.Conduct@usdoj.gov



EOIR's Judicial Conduct and Professionalism Unit

MJ Hernandez
Attorney Advisor

*April 26 – 29, 2021
New Supervisory Judge Training*



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