



Professionalism: Judicial Conduct, Complaints, and the Disciplinary Process

March 7 – 25, 2022



The Science of Immigration Judging

- Immigration and Nationality Act
- 8 Code of Federal Regulations
- Case law
- OPPMs
- Job element 1 of Performance Work Plan (PWP) – Legal Ability

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The Art of Immigration Judging





Fairness, Impartiality, Respect Sensitivity, Patience, Judgement





IJ Critical Job Element 2: Professionalism

- 2.1 Treats all people in both the courtroom and workplace with appropriate **respect**.
- 2.2 Acts in a **dignified manner**, exercising **patience** and **self-control**.
- 2.3 Is punctual and prepared for court.
- 2.4 Acts in a **fair** and **impartial** manner toward all parties and all others appearing in or before the court.
- 2.5 Appropriately controls the conduct of proceedings during hearings, giving each side a **fair** opportunity to present their respective cases, while maintaining **proper decorum** within the court.



2006 Attorney General Review



Department of Justice

MEASURES TO IMPROVE THE IMMIGRATION COURTS AND THE BOARD OF IMMIGRATION APPEALS

On January 9, 2006, the Attorney General directed the Deputy Attorney General and the Associate Attorney General to undertake a comprehensive review of the Immigration Courts and the Board of Immigration Appeals. The review team they assembled traveled to nearly 20 Immigration Courts and the Board, conducted more than 200 interviews of stakeholders, administered an online survey to hundreds of participants, and analyzed thousands of pages of material in an effort to assess the strengths and weaknesses of the immigration court system. The Deputy Attorney General and the Associate Attorney General have now briefed the Attorney General on the review team's findings and have provided him with their recommendations for reform.

Based on that advice, the Attorney General is directing the implementation of the following measures.



2006 Attorney General Review (Cont.)

“I have watched with concern the reports of immigration judges who fail to treat aliens appearing before them with appropriate respect and consideration and who fail to produce the quality of work that I expect from employees of the Department of Justice.”

“I have requested that the review include the quality of work as well as the manner in which it is performed.”



2006 Attorney General Review (Cont.)

“For the aliens who appear before them, our immigration judges are the face of American justice. . . . Not all aliens will be entitled to the relief they seek. But I insist that each case be reviewed proficiently and that each alien be treated with courtesy and respect.”



2006 Attorney General Review (Cont.)

22 Measures to Improve the Immigration Courts

- 1. Performance Evaluations
- 2. Evaluation During Trial Period
- ...
- 7. Mechanisms to Detect Poor Conduct and Quality**
- ...
- 10. Code of Conduct
- 11. Complaint Procedures**
- ...



2006 Attorney General Review (Cont.)

Measure 7: Mechanisms to Detect Poor Conduct and Quality

- EOIR Director to establish regular procedures for:
 - Board Members and OIL to report adjudications reflecting IJ temperament problems or poor court or BIA quality to the Director, CIJ, and Chairman
 - CIJ and Chairman to track and report to Director unusually frequent or serious complaints, unusually significant backlogs



2006 Attorney General Review (Cont.)

Measure 11: Complaint Procedures

- Improve quality and speed of complaint handling by:
 - standardizing complaint intake procedures
 - clearly defining roles of EOIR, OPR, OIG
 - ensuring timely and proportionate response



2006 Attorney General Review (Cont.)

8 CFR § 1003.0(b)(viii)

(b) Powers of the Director—. . . The Director shall have the authority to:

. . .

(viii) Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators



EOIR Adjudicator Conduct and Professionalism

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STATISTICS AND PUBLICATIONS

STATISTICS

- Workload and Adjudication Statistics
- Asylum Statistics
- Statistics Yearbooks

AGENCY DECISIONS

- Board of Immigration Appeals Precedent Decisions
- Office of the Chief Administrative Hearing Officer Decisions
- Recognition and Accreditation Program
- List of Disciplined Practitioners

MANUALS / MEMORANDA / PLANS / REPORTS

- EOIR Information Quality Guidelines For Information Disseminated To the Public (PDF)
- Immigration Court Practice Manual
- Board of Immigration Appeals Practice Manual
- Operating Policy & Procedure Memoranda for OCLJ
- Language Access Plan
- Policy Memoranda
- LOP Cohort Analysis (Phase I)
- Public Use of Electronic Devices in EOIR Space

EOIR ADJUDICATOR CONDUCT AND PROFESSIONALISM

- Ethics and Professionalism Guide for Immigration Judges (PDF)
- Board Member Ethics and Professionalism (PDF)

Process for Handling Complaints Against Immigration Judges

- EOIR Adjudicator Complaint Process Summary (PDF)
- EOIR Adjudicator Complaint Process Flowchart (PDF)

Immigration Judge Complaint Statistics

- Statistics for Oct 1, 2013 to Sep 30, 2014 (PDF)
- Statistics for Oct 1, 2014 to Sep 30, 2015 (PDF)
- Statistics for Oct 1, 2015 to Sep 30, 2016 (PDF)
- Statistics for Oct 1, 2016 to Sep 30, 2017 (PDF)
- Statistics for Oct 1, 2017 to Sep 30, 2018 (PDF)

ACTION CENTER

- Access ID
- Submit Feedback/Complaint
- Find Legal Representation
- Find an Immigration Court
- Contact EOIR



OCIJ Practice Manual



BIA Practice Manual



Forms

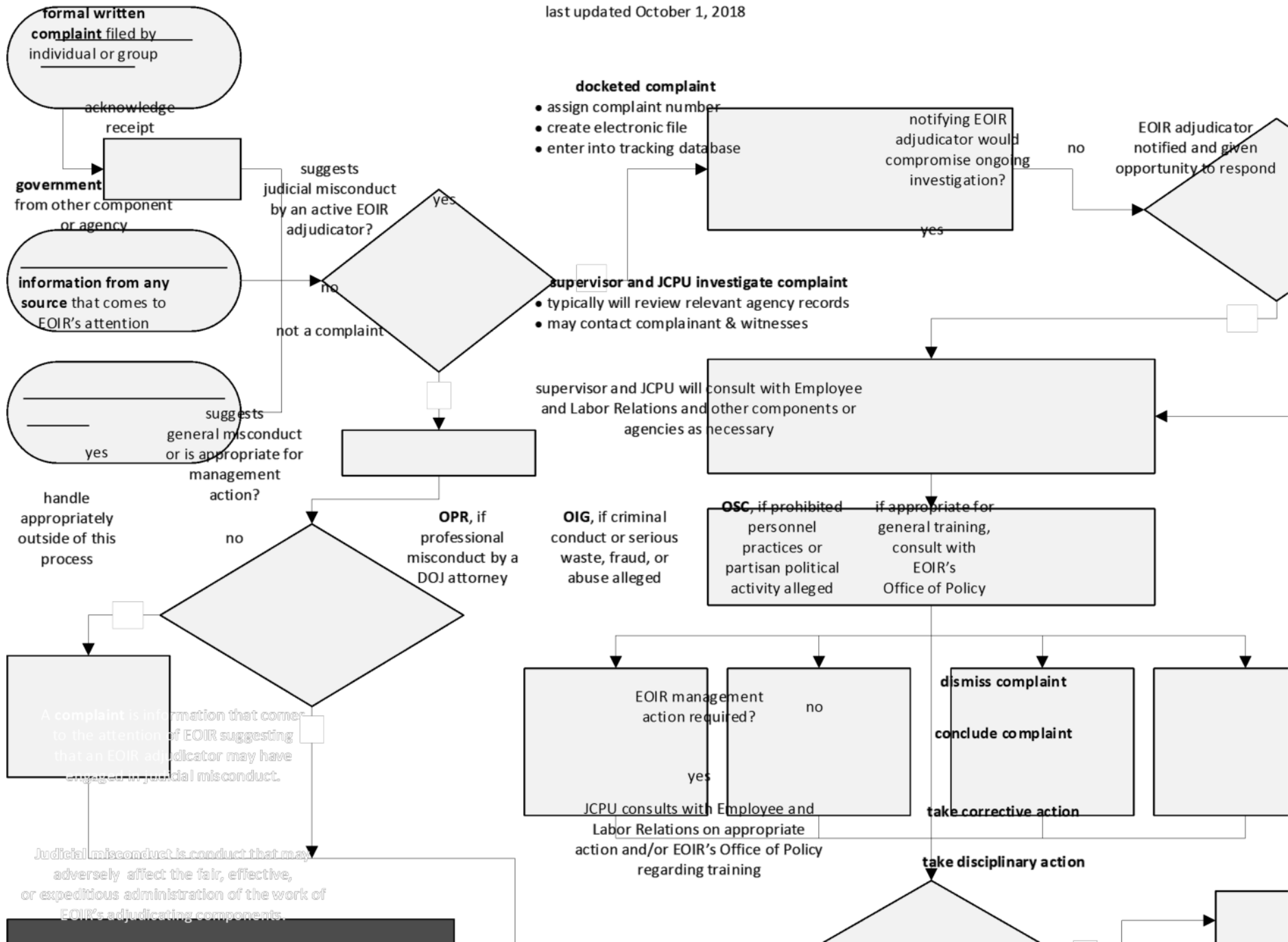


Virtual Law Library

Procedure for Handling Complaints Concerning EOIR Adjudicators

last updated October 1, 2018

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Possible Complaint Dispositions

Complaint Dismissed

- frivolous
- merits-related
- allegations disproven
- allegations cannot be substantiated
- fails to state a claim

Complaint Concluded

- corrective action already taken
- intervening event makes action unnecessary (e.g., retirement)



Possible Complaint Dispositions (Cont.)

Non-Disciplinary Corrective Action

- oral or written counseling
- training
- performance-based action (Performance Improvement Plan (PIP))



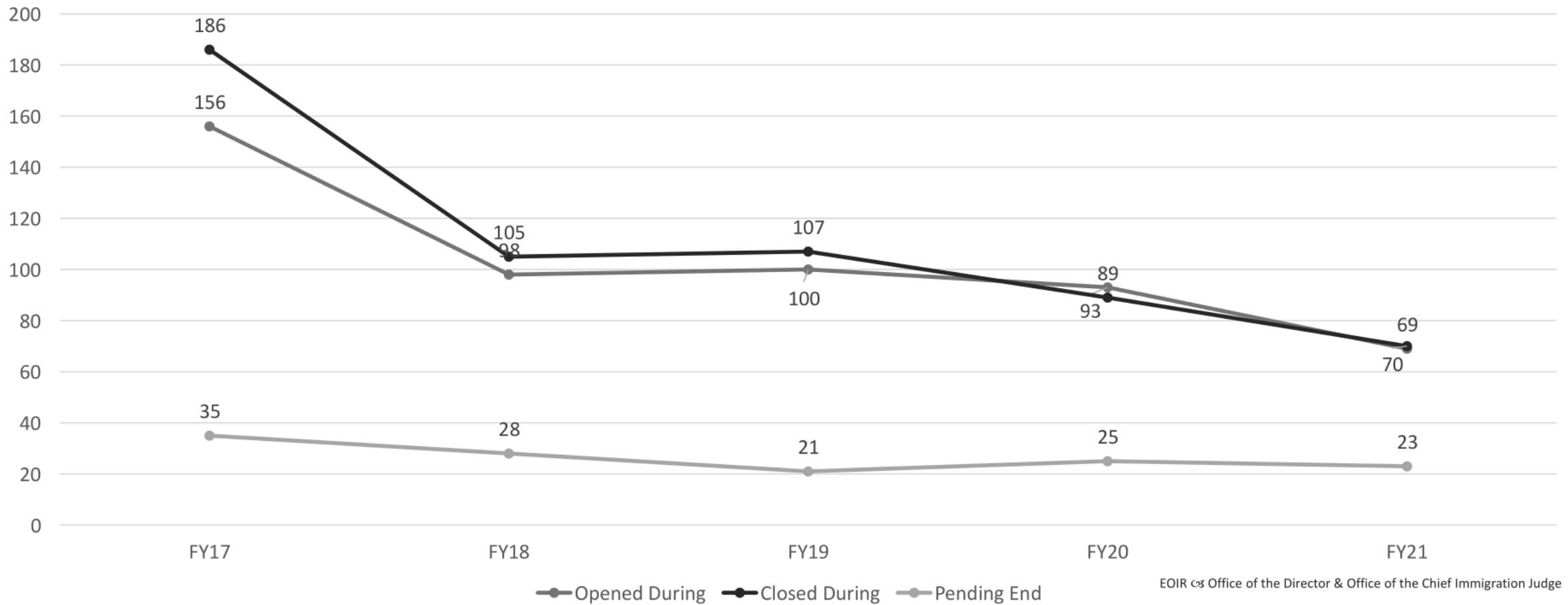
Possible Complaint Dispositions (Cont.)

Disciplinary Action

- reprimand
- suspension
- removal from federal service

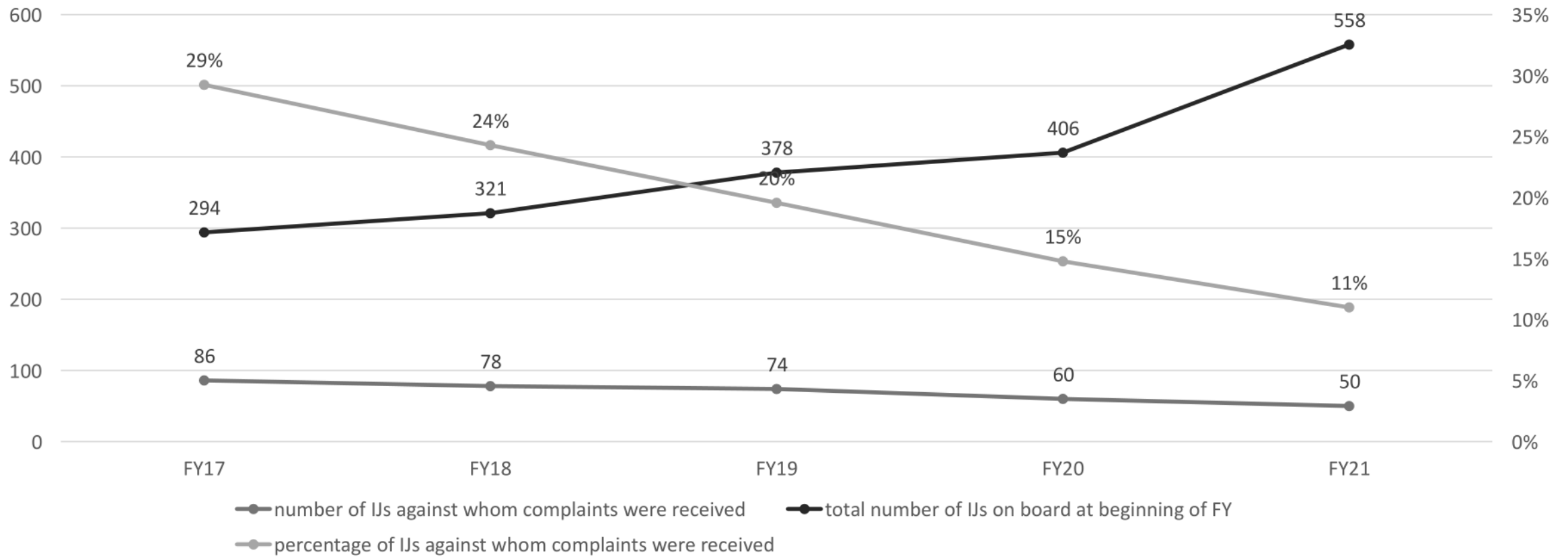


Immigration Judge Complaints Opened, Closed, and Pending FY2017 - FY2021





Number and Percentage of IJs Against Whom Complaints Were Received FY2017 - FY2021





Nature of Complaints Opened in FY2021

In-Court Conduct	49 (71%)
Due Process	21 (30%)
Legal	21 (30%)
Bias	20 (29%)
Out-of-Court Conduct	20 (29%)

*some complaints have more than one nature,
so percentages total > 100%



Sources of Complaints Opened in FY2021

Respondent's Attorney	31 (45%)
EOIR	17 (25%)
Respondent	10 (14%)
DHS	4 (6%)
Third Party	3 (4%)
Media	2 (3%)
Circuit Courts	1 (1%)
Anonymous	1 (1%)
Other	1 (1%)

*some complaints have more than one source,
so percentages may total > 100%



Dispositions of Complaints Closed in FY2021

Dismissed	50%
<i>not substantiated</i>	29%
<i>disproven</i>	11%
<i>merits-related</i>	7%
<i>frivolous</i>	3%
Corrective Actions (oral counseling, written counseling, training)	31%
Concluded (e.g., retirement, resignation, termination)	10%
Discipline (reprimand, suspension)	3%
Other (resolved per another complaint)	6%
TOTAL NUMBER OF COMPLAINTS CLOSED	70



Complaint Statistics - Summary

- With larger numbers of judges and fewer complaints, the proportion of judges who are complained about each year has steadily decreased over the past 5 years
- Approximately half of complaints are dismissed after the ACIJ finds no issue with the IJ's conduct
- Around 1/3 of complaints lead to oral or written counseling
- Fewer than 5% of complaints lead to formal discipline
- Between 5% and 15% of complaints each year become moot due to an intervening event, such as the IJ's retirement, resignation, or termination



Immigration Judge's Credo

I believe I have the distinct privilege and solemn responsibility of serving as an Immigration Judge in the United States Department of Justice. When I am on the bench I represent the Attorney General and I will conduct myself accordingly. I will decide each case fairly, thoughtfully, and promptly, and I will comport myself with the judicial temperament befitting my position. As a servant of the public, I will faithfully exercise my duties as a guardian of our nation's immigration and nationality laws. In doing so, I will treat parties before me with respect and compassion. I will be guided in all my endeavors by the fundamental precepts of professionalism, integrity, and honor, and I will adhere to the highest ethical standards. I will conduct myself in a manner that reflects great credit upon the Immigration Courts, the Department of Justice, and the United States of America.



Judging a person does not define who they are.

It defines who you are.



Performance & Disciplinary Actions

- Trial Periods
- Non-Disciplinary Actions
- Disciplinary Actions
- Penalty Determination
- Disciplinary Process/Appeal
- OIG/OPR Referral



Trial Periods

- Trial period is generally two years from the date the IJ enters on duty at EOIR
- IJs typically have limited procedural and appeal rights if removed during trial period
- A termination during the trial period may be based on performance, conduct or both



Non-Disciplinary Actions

- Counseling
- Oral
- Written
- Leave Restriction
- Employee Assistance Program (EAP) Referral
- PIP



Disciplinary Actions

- Reprimand
- Suspension of 14 days or less
- Adverse Action
 - Suspension of greater than 14 days
 - Demotion (e.g., IJ to GS)
 - Removal
- Based on a charge and a proposed penalty



Charges of Misconduct

- Some recent examples:
 - Misuse of government property/resources
 - Failure to follow policy/instructions
 - Time and attendance
 - Misuse of government-issued travel card
 - Lack of candor / false statement
 - Inappropriate/unprofessional conduct
 - Misuse of position / ethics issues
 - Negligent/careless performance of duties
 - Off-duty conduct (if there is a nexus)
 - Sexual harassment



Penalty

- Where an adverse action is being taken, the Deciding Official will consider the *Douglas* Factors
- Most Used Factors:
 - Seriousness of the offense
 - Prior disciplinary history (progressive discipline)
 - Job level
 - Clarity of notice
 - Notoriety
 - Mitigating circumstances



Disciplinary Process

- IJ discipline generally addressed by ACIJs, RDCIJs, PDCIJs and CIJ
- Proposal issued to IJ (with supporting documents)
- IJ can respond orally and/or in writing
- Deciding official considers *only* proposal (and attachments) and IJ response
- Written decision issued



Notes about Process

- Post-trial period: IJs entitled to notice and opportunity to respond to proposed discipline (except reprimands)
- No proposal/decision for counseling or reprimands
- IJs generally entitled to representative of their choice, provided there is no conflict
- Decision letters inform the IJ what their appeal rights are, if any



Reporting Allegations of Employee Misconduct

- Office of Professional Responsibility (OPR)
- DOJ Office of Inspector General (OIG)



OPR Jurisdiction

"[To] investigate . . . allegations of misconduct by Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice"

28 C.F.R. § 0.39a.



OPR Jurisdiction (Cont.)

- Jurisdiction over IJs
- Types of allegations
 - Due process
 - 8 C.F.R.
 - Bar rules



OPR Referrals

Standard for reporting:

Employees shall report to DOJ-OPR evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice.

28 C.F.R. § 0.29c(b)



OPR Process

- Initial determination (e.g., is the complaint frivolous, or is it outside of OPR's jurisdiction?)
 - OPR opens a file for all referrals
 - IJ is not notified of complaints dismissed or closed without investigation at this stage
- If OPR needs more information:
 - IJ requested to provide written response, to include jurisdictions in which IJs are licensed.



OPR Process (Cont.)

- If complaint and initial response are insufficient to close matter, OPR will open a full investigation.
 - Documents and tapes
 - Interviews (may be recorded or transcribed)
 - Counsel permitted
 - Findings included in Report of Investigation



OPR Findings

- No Misconduct
- Mistake or Poor Judgment
- Professional Misconduct
 - (reckless disregard or intentional)



OPR Findings (Cont.)

- Professional misconduct findings are generally reported to the bar jurisdiction(s) in which the IJ is licensed
- OPR recommends a range of disciplinary actions for professional misconduct findings
- Disciplinary actions handled by OCIJ in accordance with normal rules and procedures



OIG Jurisdiction

The Office of the Inspector General (OIG) is an independent investigatory entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs. The OIG investigates alleged violations of criminal and civil laws by DOJ employees and also audits and inspects DOJ programs.

28 C.F.R. § 0.29h



OIG Referrals

Standard for reporting:

“Evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG, or to a supervisor . . . for referral to the OIG”

28 C.F.R. § 0.29c(a).



OIG

- Misconduct involving criminal conduct or fraud, waste and abuse
- Misuse of position/conflicts of interest
- Investigate or not and decision usually made quickly
- Possible outcomes: indictment, referral for management action, no finding
- Unlike OPR, OIG does not recommend range of discipline

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Questions?

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