

0000085478

United States Department of Justice  Executive Office for Immigration Review

Office of the Director



# Immigration Judge Advanced Training Professionalism

*November 8, 2022*



0000035473

# Professionalism on the Immigration Bench

## Agenda for today's session:

### I. Judicial complaints

- 3 common ways you will learn about them
- addressing complaints professionally and effectively

### II. Controlling your courtroom

- general considerations
- hypotheticals – conducting hearings under challenging conditions



0000035473

# I. Judicial Complaints – Three Common Scenarios

**COMPLAINT**

	YEAR	MONTH	DAY	HOUR	MINUTE
--	------	-------	-----	------	--------

To:  Mine  Yours  Ours  Other

Whose fault:  Mine  Yours  Ours  Other

Desired outcome:  Apology  Explanation  Litigation

Complainant: \_\_\_\_\_  Anonymous

© 2020 KNOCK KNOCK LLC



0000085478

# Scenario 1: An incident in court

prime video Home Store Channels Categories ▾ My Stuff Deals Menu ▾


## Chaos in Court

Season 1 ▾ ★★★★★☆ (23) 2020 13+

Chaos in Court is a courtroom series featuring brawls and other chaos inside and outside of real court rooms

Genres Suspense, Special Interest  
Subtitles English [CC]  
Audio languages English

Buy Episode 1 HD \$2.99 Buy Season 1 HD \$19.99 More purchase options



By ordering or viewing, you agree to our Terms. Sold by Amazon.com Services LLC. Share Write review Feedback



# Scenario 2: A filing in the proceedings

RECEIVED  
DEPARTMENT OF JUSTICE

[REDACTED]

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
IMMIGRATION COURT

[REDACTED]

*Received in Court*

RESPONDENTS' MOTION TO RECUSE

---

RECEIVED  
DEPARTMENT OF JUSTICE

[REDACTED]

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
IMMIGRATION COURT

[REDACTED]

---

EXHIBIT 27

For Identification

Admitted [REDACTED]

Not Admitted \_\_\_\_\_

(1)



## Scenario 3: A formal judicial complaint submitted later



[Judicial.Conduct@usdoj.gov](mailto:Judicial.Conduct@usdoj.gov)



00000935478

## II. Courtroom Control – General Considerations

### 1. EOIR's Disciplinary Counsel

- attorney complaints x judicial complaints
- when and how to file an attorney complaint

### 2. Recusal

- when is it appropriate?
- what are the substantive standards?

### 3. Ex Parte Communications

- definition
- permissible vs. impermissible



# General Consideration 1: Disciplinary Counsel



**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 26, 2022

## **LIST OF DISCIPLINED PRACTITIONERS**

<b>NAME</b>	<b>CITY/ STATE</b>	<b>DATE IMMED . SUSP . IMPOSED</b>	<b>FINAL DISCIPLINE IMPOSED</b>	<b>EFFECTIVE DATE OF DISCIPLIN E</b>	<b>REIN- STATED?</b>





# General Consideration 2: Recusal



## U.S. Department of Justice

Executive Office for Immigration Review

*Office of the Chief Immigration Judge*

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500  
Falls Church, Virginia 22041

March 21, 2005

### MEMORANDUM

TO: All Immigration Judges  
All Court Administrators  
All Judicial Law Clerks  
All Immigration Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 05-02:  
Procedures For Issuing Recusal Orders In Immigration Proceedings

### TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND ON RECUSAL.....	1
III.	WHEN IS RECUSAL WARRANTED?.....	3
A.	RELEVANT CASE LAW.....	4



# General Consideration 3: Ex Parte Communications

**ETHICS AND PROFESSIONALISM GUIDE  
FOR IMMIGRATION JUDGES**

• • •

**XXXII. Ex Parte Communications**

**An Immigration Judge should not initiate, permit, or consider ex parte communications, or consider other communications made to the Immigration Judge outside the presence of the parties or their lawyers, concerning a pending matter, except as follows:**

- (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address**



0000035473

## Courtroom Control – Hypothetical 1

An attorney has a habit of filing last-minute “emergency” motions to continue merits hearings. Her motion in this case was filed on Wednesday and today, Friday, is the scheduled merits hearing. It is not truly an emergency, and counsel fails to appear.

- What factors do you consider in ruling on the motion?
- Do you ultimately continue the case? If so, what adjournment code?
- Does your answer change if counsel has a hearing in another court on the day of your scheduled merits hearing?
- Does your answer change if the motion was filed at 8 AM for a 10 AM hearing?



0000035473

## Courtroom Control – Hypothetical 2

You are conducting proceedings on the record, and a cell phone starts ringing. How do you handle?

- Does your answer change if it's an attorney vs. a respondent?
- Does your answer change if, instead of hearing a cell phone ringing, you notice someone texting or scrolling?



0000035473

## Courtroom Control – Hypothetical 3

You are conducting proceedings, and the respondent engages in repeated, disruptive outbursts. How do you handle?

- Does your answer change if the respondent is represented vs. pro se?
- Does your answer change if you are in a detained vs. non-detained setting?
- Does your answer change if you are conducting the proceedings in person vs. via video conferencing?



0000035473

## Courtroom Control – Hypothetical 4

A practitioner enters an appearance before you, and you know that they are not currently authorized to practice before EOIR. How do you proceed?

- Does your answer change if it is a suspended attorney vs. a former accredited representative?
- What steps do you take to make and protect the record?



00000935478

## Courtroom Control – Hypothetical 5

An attorney is unaware of current, binding case law that would resolve a central issue in a particular case. How do you handle this?

- Does your answer change if it is an attorney vs. an accredited representative?
- Pro bono vs. fee-earning?
- DHS vs. respondent's attorney?



0000035478

## Courtroom Control – Hypothetical 6

An attorney challenges you (“objects”) when you ask witnesses questions from the bench.

- How do you respond?





0000035478

## Courtroom Control – Hypothetical 7

During a merits hearing, counsel makes an objection that you promptly rule on. Counsel continues to argue and disrupts the proceedings.

- How do you proceed?
- Does your approach change if the dispute is about an oral motion made prior to taking testimony, as opposed to an objection to a DHS question during cross?



0000035473

## Courtroom Control – Hypothetical 8

The respondent is an acquaintance of yours from outside of court. How do you proceed?

- You met them at the dog park
  - once vs. every afternoon and weekend
- They were your server at a restaurant
  - once vs. your favorite server at your favorite spot
- Former colleague at ICE-OPLA? Private firm? Same NGO? Another NGO? AILA Executive Board?



## Courtroom Control – Hypothetical 9

You are trying to plan the rest of your day on the bench. Between cases, you want to know if DHS is ready to go on the next case, or if they'll be submitting more evidence.

- How do you proceed?



## Courtroom Control – Hypothetical 10

After the respondent finishes testifying in the merits hearing, you suspect that the attorney has gone into the lobby and discussed the testimony with the sequestered witnesses.

- How do you proceed?



## Courtroom Control – Hypothetical 11

An attorney appears at a master calendar hearing and admits and concedes. DHS submits the conviction documents, but you know that a recent binding circuit case means that the conviction does not support the charge.

- What do you do with counsel’s pleadings?
- Is this a Disciplinary Counsel situation?
- Do you try to “educate” the attorney?



## Courtroom Control – Hypothetical 12

Counsel files an application on behalf of a respondent, while admitting that the respondent is not eligible for that form of relief, in order to gain a strategic advantage through delay.

- How do you proceed?
- Application already in the file vs. trying to file it with you
- Application filed earlier and subsequently withdrawn vs. still pending



0000035473

## Courtroom Control – Hypothetical 13

Counsel asks you to use pronouns for the respondent that do not match their birth name or gender. How do you proceed?

- What if, instead of pronouns, you're asked to change the respondent's name in CASE from their birth name (that appears on their NTA and identity documents) to a preferred name that matches their gender presentation?
- Does your answer change if the respondent's gender identity or presentation is a disputed question of fact that is relevant to the merits of their application?



## Courtroom Control – Hypothetical 14

At an initial master calendar hearing, a pro se respondent appears not to understand you or the Spanish interpreter. DHS's file indicates that the respondent speaks Spanish. The respondent is alone in court, without any friends or family. How do you proceed?





## Courtroom Control – Hypothetical 15

A pro se respondent with limited English proficiency files an asylum application packet. The preparer section of the I-589 is blank, and the respondent insists that she completed the form, wrote her statement, and assembled the documents herself. However, you strongly suspect that the packet was prepared by someone else, primarily because her statement is written at a very high level of English proficiency. How do you proceed?



00000985478

# Questions?

Daniel Swanwick

Counsel to the Deputy Director (acting)

Mary Cheng

Deputy Director

Sheila McNulty

Regional Deputy Chief Immigration Judge